Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 024
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Amend FINRA Rule 2231 (Customer Account Statements)

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 action.

First Name * Sarah Last Name * Kwak

Title * Associate General Counsel

E-mail * sarah.kwak@finra.org

Telephone * (202) 728-8471 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 09/29/2021

By Kosha Dalal
(Name *)

(Title *)
Vice President and Associate General Counsel

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

Kosha Dalal
Digitally signed by Kosha Dalal
Date: 2021.09.29 16:59:15 -04'00'

Required fields are shown with yellow backgrounds and astericks.

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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FINRA-2021-024 19b-4.docx

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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FINRA-2021-024 Exhibit 1.docx

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 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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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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FINRA-2021-024 Exhibit 2a.pdf
FINRA-2021-024 Exhibit 2b.pdf
FINRA-2021-024 Exhibit 2c.pdf

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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FINRA-2021-024 Exhibit 5.docx
FULL COMPLETE FILING - FINRA-20

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 the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA"),[1] the Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to: (1) amend Rule 2231 (Customer Account Statements) to (a) add new supplementary materials pertaining to compliance with Rule 4311 (Carrying Agreements), the transmission of customer account statements to other persons or entities, the use of electronic media to satisfy delivery obligations, and compliance with Rule 3150 (Holding of Customer Mail); and (b) incorporate without substantive change specified provisions derived from Temporary Dual FINRA-NYSE Rule Interpretation 409T (Statements of Accounts to Customers) pertaining to information disclosed on customer account statements, externally held assets, use of logos and trademarks, and use of summary statements; (2) delete Temporary Dual FINRA-NYSE Rule 409T (Statements of Accounts to Customers) and Temporary Dual FINRA-NYSE Rule Interpretation 409T;[2] and (3) make other non-substantive and technical changes in Rule 2231 and to other FINRA rules due to this proposed rule change.

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1 15 U.S.C. 78s(b)(1).

2 As part of the process of completing a consolidated FINRA rulebook, FINRA adopted, without substantive changes, the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series. These NYSE rules and their corresponding interpretations now bear a "T" modifier after the rule and interpretation number to denote their placement in the Temporary Dual FINRA-NYSE Member Rules Series. The Temporary Dual FINRA-NYSE Member Rules Series 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

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 365 days following publication of the Regulatory Notice announcing Commission approval of the proposed rule change.

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

(a) Purpose

Background

Rule 2231 and NYSE Rule 409T govern the obligation of members to deliver customer account statements to customers. Specifically, Rule 2231 and NYSE Rule

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terms. Among the remaining NASD rules was NASD Rule 2340 (Customer Account Statements), which was adopted, without substantive changes, as FINRA Rule 2231. Incorporated NYSE Rule 409 (Statements of Accounts to Customers) and Incorporated NYSE Rule Interpretation 409 (Statements of Accounts to Customers) were adopted, without substantive changes, under the Temporary Dual FINRA-NYSE Rules Series as Rule 409T and Interpretation 409T, respectively. See Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-009). For convenience, the rules and interpretations under the Temporary Dual FINRA-NYSE Member Rules Series are referred to as "NYSE Rule" and "NYSE Rule Interpretation," as appropriate.

409T require each "general securities member"[3] and each member organization carrying customer accounts, respectively, to send account statements to customers at least quarterly showing security and money positions or account activity during the preceding quarter, except if carried on a Delivery versus Payment/Receive versus Payment ("DVP/RVP") basis.

At the time FINRA adopted Rule 2231, along with NYSE Rule 409T and NYSE Rule Interpretation 409T (together, "NYSE provisions"), among others, into the consolidated FINRA rulebook, FINRA noted that it would continue to review the substance of such rules and expected to propose substantive changes to some or all of the rules as part of future rulemakings.[4] As part of that effort and as described further below, FINRA is now proposing to amend Rule 2231 that would incorporate several existing provisions from the NYSE provisions. As a result of this proposed harmonization, the NYSE provisions would be deleted in their entirety.

Rule 2231 differs from the NYSE provisions in several ways. First, Rule 2231(c) sets forth requirements for disclosure of values for unlisted or illiquid direct participation programs or real estate investment trust securities. Neither NYSE Rule 409T nor NYSE Rule Interpretation 409T have a corresponding provision. Second, the NYSE provisions address the delivery of confirmations, account statements or other communications to

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3 Rule 2231(d) defines the term "general securities member" to mean "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). 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."

4 See supra note 2.

third parties subject to specified conditions and exceptions. In addition, NYSE Rule 409T(g) 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. Rule 2231 does not have similar provisions. Third, Rule 2231(d) expressly defines several terms (e.g., "account activity," "DVP/RVP account," "general securities member") and Rule 2231(e) provides for exemptive relief from the rule. NYSE Rule 409T expressly defines only one term, "DVP/RVP account," and does not provide for exemptive relief from the rule. Finally, unlike Rule 2231, NYSE Rule Interpretation 409T dictates the disclosures that must be made in a customer account statement, including for externally held assets, and requirements for use of third party agents, logos and trademarks, summary statements, and sets forth the standards for holding mail for a customer.

In light of these differences, FINRA is specifically proposing to: (a) add as new Supplementary Materials .01 (Compliance with Rule 4311 (Carrying Agreements)), .02 (Transmission of Customer Account Statements to Other Persons or Entities), .03 (Use of Electronic Media to Satisfy Delivery Obligations), and .04 (Compliance with Rule 3150 (Holding of Customer Mail)); and (b) incorporate provisions derived from NYSE Rule Interpretation 409T, without substantive change, as Supplementary Materials .05 (Information to be Disclosed on Statement), .06 (Assets Externally Held), .07 (Use of Logos, Trademarks, etc.), and .08 (Use of Summary Statements).

Rule Filing History

In 2009, FINRA had filed with the SEC a proposed rule change to adopt then NASD Rule 2340 and legacy NYSE Rule 409, including its related interpretations, as Rule 2231 into the consolidated FINRA rulebook ("Initial Rule Filing") as part of the process of developing the consolidated FINRA rulebook.[5] Among other things, the Initial Rule Filing had set forth a number of proposed supplementary materials, most of which were derived largely from then NYSE Rule Interpretation 409 to address customer account disclosures, including for externally held assets, and requirements for use of third party agents, logos and trademarks, summary statements, and holding customer mail.[6]

Among these proposed supplementary materials was one, based in part on legacy NYSE Rule 409(b), which would have required written instructions from the customer to address or send customer statements, confirmations or other communications relating to the customer's account to other persons or entities. However, unlike legacy NYSE Rule 409(b), the proposed supplementary material was silent on whether a firm would have to continue sending account statements to the customer. Commenters to the Initial Rule Filing expressed concerns relating to the need for written customer consent to transmit customer account statements to third parties and sought clarification on whether firms would be required to obtain written consent when complying with then NASD Rule 3050

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5 See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing of File No. SR-FINRA-2009-028).

6 FINRA had also proposed amending then NASD Rule 2340 to change the frequency of the delivery of account statements to a customer from quarterly to monthly where the customer had account activity during the preceding month, 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.

(Transactions for or by Associated Persons) and then NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange).[7] In response to these comments, among others, FINRA amended the Initial Rule Filing in 2011 ("Amended Rule Filing").[8] With respect to the transmission of customer account statements to third parties, FINRA had proposed clarifying that member firms would not be required to obtain prior written consent from their associated persons to send duplicate account statements or other communications with respect to such associated persons' accounts that were subject to then NASD Rule 3050 and NYSE Rule 407. To address concerns regarding potential fraud, especially with senior investors, where a third party receives the account statements in lieu of such customer, FINRA had also proposed clarifying that firms would have to continue to deliver account statements to customers, either in paper format or electronically, even when directed by the customer, in writing, to send statements to a third party. FINRA made this clarification in an effort to remain consistent with any SEC release, interpretation, "no-action" position or exemption issued

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7 NASD Rule 3050 and NYSE Rule 407 are the predecessor rules to Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions). In 2015, FINRA adopted Rule 3210 in the consolidated FINRA rulebook to replace NASD Rule 3050, NYSE Rules 407 and 407A (Disclosure of All Member Accounts) and the corresponding NYSE interpretations. See Securities Exchange Act Release No. 75655 (August 10, 2015), 80 FR 48941 (August 14, 2015) (Notice of Filing of File No. SR-FINRA-2015-029). Rule 3210 governs accounts that associated persons open or establish at firms other than their employer and in which they have a beneficial interest. In general, the rule requires that the associated person must obtain the prior written consent of his or her employer to open or establish the account, and provides that the member firm where the account is held must transmit duplicate copies of confirmations and statements to the employer upon the employer's request.

8 See Securities Exchange Act Release No. 64969 (July 26, 2011), 76 FR 46340 (August 2, 2011) (Notice of Filing of Amendment No. 1 to File No. SR-FINRA-2009-028).

by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of transactions) that have established the policy that customers should continue to receive periodic account statements when not receiving immediate trade confirmations under SEA Rule 10b-10.[9] Further comments were received in response to the Amended Rule Filing. Commenters objected to the proposed requirement to deliver account statements to customers even when directed by customers, in writing, to send the statements to third parties. Some commenters believed that members should not be required to continue delivering account statements to customers, particularly where there was a power of attorney ("POA") or incapacity. FINRA withdrew the filing to further consider the comments.[10]

To address the concerns raised in the prior filing, FINRA published Regulatory Notice 14-35 (September 2014) ("Notice" or "Notice 14-35 Proposal"), seeking comment on a revised proposal to transfer then NASD Rule 2340 and Incorporated NYSE Rule 409 and its related interpretations, largely unchanged, into the consolidated FINRA rulebook as Rule 2231. With respect to the proposed supplementary material pertaining to the transmission of customer account statements to other persons or entities, the Notice 14-35 Proposal set forth changes to that provision that aligned more closely with then NYSE Rule 409(b) and were intended to help ensure that a customer continues to receive the account statement even when such customer directs the firm to send the statement to a third party. As described further below, the proposed rule change differs in some

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9 17 CFR 240.10b-10. See also note 8, supra.

10 See Securities Exchange Act Release No. 67588 (August 2, 2012), 77 FR 47470 (August 8, 2012) (Notice of Withdrawal of File No. SR-FINRA-2009-028).

respects from the terms set forth in the Notice 14-35 Proposal as to proposed Supplementary Material .02. In all other respects, subject to some technical changes, the proposed amendments to Rule 2231 remain substantively unchanged from the Notice 14-35 Proposal.

Proposed Amendments to Rule 2231

In 2019, after the publication of the Notice, FINRA adopted the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series.[11] No substantive changes to these rules were made in connection with the move into the consolidated FINRA rulebook. NASD Rule 2340 was renumbered as Rule 2231 and Incorporated NYSE Rule 409 and Incorporated NYSE Rule Interpretation 409 were renumbered as NYSE Rule 409T and NYSE Rule Interpretation 409T, respectively.

A. Paragraphs (a) through (e) Under Rule 2231 to Remain Substantively Unchanged

In general, paragraph (a) (General) under Rule 2231 addresses the frequency of the delivery of customer account statements, and the requirement for account statements to include a statement advising customers to report to the firm (introducing firm and clearing firm, if different) inaccuracies in their accounts in writing. Paragraph (b) (Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts) addresses account statement delivery requirements for DVP/RVP arrangements. Paragraph (c) (DPP and Unlisted REIT Securities) requires, among other things, general securities

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11 See supra note 2.

members to include in customer account statements a per share estimated value for a direct participation program ("DPP") or real estate investment trust ("REIT") security developed in a manner reasonably designed to ensure that the per share estimated value is reliable. In addition, paragraph (c) provides two methodologies for calculating the per share estimated value for a DPP or REIT security that is deemed to have been developed in a manner reasonably designed to ensure that it is reliable: the net investment methodology and the appraised value methodology. Paragraph (d) (Definitions) sets forth several definitions and finally, paragraph (e) (Exemptions) permits FINRA to exempt any member firm from the rule upon a showing of good cause. Consistent with the Notice 14-35 Proposal, FINRA is proposing to retain, without substantive changes, the existing requirements set forth in paragraphs (a) through (e) under Rule 2231.

B. Proposed Supplementary Materials to Rule 2231

In an effort to harmonize the NYSE provisions with Rule 2231, FINRA is proposing to add new supplementary materials relating to compliance with Rule 4311, the transmission of customer account statements to other persons or entities, the use of electronic media, and compliance with Rule 3150. In addition, the proposed change would transfer, with clarifying and technical changes, the existing requirements in NYSE Rule Interpretation 409T relating to the information to be disclosed on statements,[12] assets externally held and included on statements solely as a service to customers,[13] the

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12 See NYSE Rule Interpretation 409T(a)/02 (Information to be Disclosed).

13 See NYSE Rule Interpretation 409T(a)/04 (Assets Externally Held and Included in Statements Solely as a Service to Customers).

use of logos and trademarks, etc.,[14] and the use of summary statements.[15] As a result of this harmonization, some provisions would be new for FINRA members that are not also members of the NYSE (or "non-NYSE members") and for dual members. FINRA believes that harmonizing the NYSE provisions into Rule 2231 would provide greater clarity and regulatory efficiency to all FINRA member firms.

1. Compliance with Rule 4311 (Carrying Agreements) (Proposed Supplementary Material .01)

FINRA is proposing to add new Supplementary Material .01 to Rule 2231 that would remind firms of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2). Rule 4311 generally governs the requirements applicable to member firms when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. In general, Rule 4311(c) requires that each carrying agreement in which accounts are to be carried on a fully disclosed basis must specify the responsibilities of each party to the agreement, setting forth the minimum responsibilities that the agreement must allocate. Among those responsibilities, outlined in Rule 4311(c)(2), is to require each carrying agreement in which accounts are carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 (Customer protection – reserves and custody of securities.)

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14 See NYSE Rule Interpretation 409T(a)/05 (Use of Logos, Trademarks, etc.).

15 See NYSE Rule Interpretation 409T(a)/06 (Use of Summary Statements).

and for preparing and transmitting statements of account to customers.[16] To emphasize the importance of ensuring the accuracy and integrity of customer account statements, proposed Supplementary Material .01 would remind firms of their obligations under Rule 4311, including paragraph (c)(2).

2. Transmission of Customer Account Statements to Other Persons or Entities (Proposed Supplementary Material .02)

Unlike NYSE Rule 409T, Rule 2231 does not address the transmission of customer account statements to third parties. To harmonize NYSE Rule 409T with Rule 2231, FINRA is proposing to add new Supplementary Material .02 to Rule 2231 to address the transmission of customer account statements to other persons or entities in similar fashion as NYSE Rule 409T. In general, NYSE Rule 409T(b) prohibits, without the NYSE's consent, the delivery of statements, confirmations or other communications to a nonmember customer: (1) in care of a person holding POA over the customer's account unless either (A) the customer has provided written instructions to the member organization to send such confirmations, statements or communications in care of such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by the customer; 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.[17]

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16 17 CFR 240.15c3-3. Rule 4311(c)(2) also provides that the carrying firm may authorize the introducing firm to prepare and/or transmit statements of account to customers on the carrying firm's behalf with the prior written approval of FINRA.

17 NYSE Rule 409T(b) also provides that NYSE may, upon written request, waive the requirements therein. NYSE Rule 409T(b)(2) waivers are addressed in NYSE Rule Interpretation 409T(b)/01 (Standards for Holding Mail for Foreign Customers – Rule 409T(b)(2) Waivers), discussed below.

In the Notice, FINRA had proposed that, except as required to comply with Rule 3210 (the successor rule to NASD Rule 3050 and NYSE Rule 407), a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding POA over the customer's account unless (1) the customer provided written instructions to the firm to send such statements or other communications to such person or entity or in care of a person holding POA over the customer's account; and (2) the firm sent duplicates of such statements or other communications, in accordance with Rule 2231, directly to the customer either in paper format or electronically as provided in proposed Supplementary Material .03. FINRA notes that unlike NYSE Rule 409T(b), which provides a firm the option (using the disjunctive "or") to continue delivering account statements to the customer that has an arrangement with the firm to deliver account statements to a third party, proposed Supplementary Material .02 as described in the Notice 14-35 Proposal did not. Omitting this option limited a customer's ability to decline receiving statements.

Commenters to the Notice 14-35 Proposal expressed concerns with this limitation, particularly where the customer's health or capacity was in question. In consideration of comments received to that proposal, FINRA is proposing to adjust the proposed supplementary material in several ways. The term "or other communications" would be deleted from the proposed rule text to clarify that proposed Supplementary Material .02 would be confined to only customer account statements. The specific reference to "or in care of a person holding power of attorney over the customer's account" would also be deleted from the proposed rule text, leaving the general reference to "other persons or

entities" that could include any third party the customer may designate to receive the account statements.

In addition, while proposed Supplementary Material .02 would retain the continuous statement delivery requirement to the customer as described in the Notice 14-35 Proposal, the proposed supplementary material would be adjusted to create a limited exception to the general requirement to continue to deliver account statements to a customer in cases where there is a court-appointed fiduciary. Specifically, proposed Supplementary Material .02(b) would provide that where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on behalf of a customer, a member may cease sending account statements to the customer upon written instructions from such court-appointed fiduciary provided that the court-appointed fiduciary furnishes to the member an official copy of the court appointment that establishes authority over the customer's account(s). As adjusted, proposed Supplementary Material .02(a) would state that, except as provided for in proposed paragraph (b) relating to the existence of a court-appointed fiduciary, a member may not send account statements relating to a customer's account(s) to other persons or entities unless: (1) the customer has provided written instructions to the member to send the statements to such person or entity; and (2) the member continues to send accounts statements directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 (Use of Electronic Media to Satisfy Delivery Obligations) of Rule 2231.

Finally, proposed Supplementary Material .02(c) would maintain, in similar fashion to the Notice 14-35 Proposal, that notwithstanding proposed Supplementary

Material .02(a), a member may provide duplicate customer account statements under Rule 2070 (Transactions Involving FINRA Employees), Rule 3210, or other similar applicable federal securities laws, rules, and regulations in accordance with the requirements of such rule.[18]

FINRA believes that the proposed supplementary material, as adjusted herein, achieves the appropriate balance between ensuring that customers continue to receive their account statements in accordance with Rule 2231(a) to retain the ability to readily monitor their account activity while recognizing that there are special circumstances where a firm may stop the delivery of account statements to customers.

3. Use of Electronic Media to Satisfy Delivery Obligations (Proposed Supplementary Material .03)

FINRA is proposing to add new Supplementary Material .03 to Rule 2231 that would expressly allow a member 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.[19] This provision would be consistent with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.[20]

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18 See supra note 7.

19 SEC guidance to date on the use of electronic media generally requires the affirmative consent of the investor or customer. See Securities Act Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995); Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644 (May 15, 1996); and Securities Act Release No. 7856 (April 28, 2000); 65 FR 25843, 25854 (May 4, 2000).

20 See Notice to Members 98-3 (January 1998) (stating in part that members are permitted to electronically transmit documents that they are required or permitted to furnish to customers under FINRA rules, provided they comply with all aspects of the SEC's electronic delivery requirements).

4. Compliance with Rule 3150 (Holding of Customer Mail) (Proposed Supplementary Material .04)

In general, Rule 3150 allows a firm to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the firm meets specified conditions. FINRA is proposing to add new Supplementary Material .04 to Rule 2231 that would permit member firms to hold customer mail, including customer account statements, subject to the requirements of Rule 3150.

5. Information to be Disclosed on Statement (Proposed Supplementary Material .05)

NYSE Rule Interpretation 409T(a)/02 describes the information that must be disclosed on the front of a customer account statement: the identity of the introducing and carrying organizations, and their respective phone numbers for service; that the carrying organization is a member of Securities Investor Protection Corporation ("SIPC"); and the opening and closing account balances. Note 1 to NYSE Rule Interpretation 409T(a)/02 provides that "[t]he SEC has stated that under the SEA 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." Unlike NYSE Rule Interpretation 409T(a)/02, Rule 2231 does not detail the information that must be clearly and prominently disclosed on the front of an account statement. FINRA is proposing to transfer NYSE Rule Interpretation 409T(a)/02, inclusive of note 1, without substantive changes, as Supplementary Material .05 to Rule 2231. Proposed Supplementary Material .05 to Rule 2231 would specify the following information to be

clearly and prominently disclosed on the front of the account statement: (1) the identity of the introducing and clearing firm, if different, and their respective contact information for customer service, permitting the identity of the clearing firm and its contact information to appear on the back of the statement provided such information is in "bold" or "highlighted" letters; (2) that the clearing firm is a member of SIPC; and (3) the opening and closing balances for the account.

6. Assets Externally Held (Proposed Supplementary Material .06)

NYSE Rule Interpretation 409T(a)/04 provides that where the account statement includes assets for which a 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 separated on the statement. In addition, the statement must indicate that such externally held assets are included on the statement solely as a service to the customer and are not covered by SIPC, and that information is derived from the customer or other external source for which the member organization is not responsible.[21] Rule 2231 does not contain a similar provision.

FINRA is proposing to transfer the requirements of NYSE Rule Interpretation 409T(a)/04, without substantive changes, as proposed Supplementary Material .06 to Rule 2231. Under proposed Supplementary Material .06, where the account statement includes assets that the member firm does not carry on behalf of a customer and that are not included on the member firm's books and records, such assets must be clearly and distinguishably separated on the statement. In addition, in such cases, the statement

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21 See NYSE Information Memo 97-56 (December 1997) (stating, "[t]his provision is not intended to cover assets (e.g., stocks or mutual funds) to which the member organization has access that may be held at a depository or mutual fund.").

must: (1) clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer; (2) disclose that information, including valuation, for such externally held assets is derived from the customer or other external source for which the member firm is not responsible; and (3) identify that such externally held assets may not be covered by SIPC.

7. Use of Logos, Trademarks, Etc. (Proposed Supplementary Material .07)

NYSE Rule Interpretation 409T(a)/05 provides that where the logo, trademark or other identification of a person (other than the introducing firm or clearing firm) appears on an account statement, then the identity of such person and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be misleading or confusing to customers. Rule 2231 does not contain a similar provision. FINRA is proposing to transfer, without substantive change, NYSE Rule Interpretation 409T(a)/05 as proposed Supplementary Material .07. FINRA notes that proposed Supplementary Material .07 would be consistent with the general requirements of Rule 2210 (Communications with the Public).

8. Use of Summary Statements (Proposed Supplementary Material .08)

NYSE Rule Interpretation 409T(a)/06 addresses the responsibilities associated with the practice of firms, with other related financial institutions, to jointly formulate and distribute to their common customers their respective customer account statements, together with "summary statements."[22] In general, a summary statement reflects information from entities that is part of a financial services "group" or "family" or where

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22 See generally NYSE Information Memo 97-56 (December 1997).

a firm carries accounts for another broker-dealer that is part of such group or family. A summary statement provides an overview of the customer's accounts at the separate entities and is supported by and derived from the detail on the separate underlying respective account statements. NYSE Rule Interpretation 409T(a)/06 sets forth several requirements for the use of summary statements that include: (1) an indication that such summary statement is provided for informational purposes and includes assets held at different entities; (2) the summary statement identifies each entity from which information is provided or assets are being held are included, their relationship to each other, and their respective functions (e.g., introducing or carrying brokerage firms, fund distributor, banking or insurance product providers, etc.); (3) relative to services provided for assets included on the summary, the summary statement must clearly distinguish between assets held by each entity, identify the customer's account numbers at each entity, and provide a customer service telephone number at each entity (if the account number and customer service numbers are not included on the underlying statements); and (4) identify each entity that is a member of SIPC. These requirements help ensure that customer account statements clearly identify the respective entities involved and distinguish brokerage assets from non-brokerage assets.[23] Rule 2231 does not have a

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[23] NYSE Rule Interpretation 409T(a)/06 also provides that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation must be recognizable as having been arithmetically derived from the separately stated totals or their components. In addition, the summary statement, and the beginning and end of each underlying account statement, must be clearly distinguishable from each other by using some distinct form of demarcation (e.g., color, pagination or columns). Further, there must be a written agreement between the parties that are jointly distributing the combined statements with the summary, that each entity has developed procedures and controls for testing the accuracy of its own information included on the customer statement. Finally, NYSE Rule Interpretation 409T(a)/06

counterpart provision.[24] In the Notice, FINRA had proposed transferring the requirements of NYSE Rule Interpretation 409T(a)/06, without substantive changes, as proposed Supplementary Material .08 to Rule 2231.

FINRA is proposing to retain this approach, but with some clarifying revisions to proposed Supplementary Material .08 to expressly state that the summary statement is for a customer's convenience and includes assets that may not be held by the broker-dealer, and does not replace any other statement the customer may receive from other financial institutions that may hold the customer's assets. Under proposed Supplementary Material .08, as revised, if a multi-entity summary statement is sent to customers, it must: (1) indicate that the summary statement is provided for the customer's convenience and includes assets that may not be held by the broker-dealer; (2) indicate that the summary statement does not replace any other statement(s) the customer may receive from other financial institutions that hold the customer's assets; (3) identify each entity from which information is provided or assets being held are included, their relationship to each other (e.g., parent, subsidiary or affiliated organization), and their respective functions

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requires that summary statements must comply with NYSE Rule 409T and all interpretations thereof.

24 While Rule 2231 does not have a counterpart provision to NYSE Rule Interpretation 409T(a)/06, FINRA has issued guidance reminding firms of their responsibilities when providing customers with consolidated financial account reports or "consolidated reports," which offer a broad view of customers' investments, may include assets held away from the firm, and may provide not only account balances and valuations, but performance data as well. In that guidance, FINRA noted that these types of communications "may supplement, but do not replace, the customer account statement required pursuant to [Rule 2231] and [NYSE Rule 409T], which is prepared and disseminated to the customer through a separate process. Consolidated reports may not be represented as a substitute for, and must be distinguished from, account statements that are required by rule." See Regulatory Notice 10-19 (April 2010).

(introducing firm, carrying firm, fund distributor, banking or insurance product provider, etc.); (4) clearly distinguish between assets held or categories of assets held by each entity included in the summary; (5) identify the customer's account number at each entity and provide a customer service contact information at each entity (if the account number and customer service information at each entity are included on their respective account statements, then such information need not be included on the summary statement); and (6) identify each entity that is a member of SIPC. Proposed Supplementary Material .08 would also require a member firm to ensure that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation is recognizable as having been arithmetically derived from the separately stated totals or their components. In addition, proposed Supplementary Material .08 would require that a member firm also must distinguish the beginning and end of each separate statement by a distinct form of demarcation. Finally, the proposed supplementary material would require a member firm to ensure that there is a written agreement between the parties jointly formulating or distributing the combined statements with the summary attesting that each entity has developed procedures and controls for testing the accuracy of its own information included on the statements, and that the summary statement complies with Rule 2231.

C. NYSE Provisions to be Eliminated and Not Harmonized with Rule 2231

FINRA is proposing to delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions have been included in Rule 2231, are duplicative of other rules, or are outdated. The following describes concepts found in the NYSE provisions that would not be incorporated into Rule 2231.

1. NYSE Rule 409T Provisions

a. Confirmations or Other Communications (NYSE Rule 409T(b))

As described above, the proposed rule change would confine proposed Supplementary Material .02 to customer account statements to lend clarity to the scope of the provision. FINRA notes that the delivery requirements of confirmations are governed by SEA Rule 10b-10 (Confirmation of transactions) and FINRA Rule 2232 (Customer Confirmations).

b. Person Holding Power of Attorney (or Attorney-in-Fact) (NYSE Rule 409T(b) and Paragraphs (1) through (6) Under NYSE Rule 409T.10 (Exceptions to Rule 409T(b))

In addition to eliminating NYSE Rule 409T(b), the proposed rule change would eliminate NYSE Rule 409T.10(1) through (6), which provides exceptions to the requirements of NYSE Rule 409T(b) for certain identified persons or entities, such as persons having powers of attorney.[25] As described above, FINRA is proposing to adopt proposed Supplementary Material .02 relating to the transmission of customer account statements to other persons or entities, which would provide an exception for court-appointed fiduciaries.

c. Legend on Account Statements Pertaining to Firm's Financial Statements (NYSE Rule 409T(e)(1))

In general, NYSE Rule 409T(e)(1) requires the inclusion of a legend on all account statements that notifies a customer that the firm's financial statements are

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25 See NYSE Rule 409T.10(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."

available for inspection at its offices or a copy can be mailed upon request. The proposed rule change would eliminate this requirement in light of existing requirements under paragraph (c) (Customer Statements) of SEA Rule 17a-5 (Reports to be Made by Certain Brokers and Dealers),[26] which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and FINRA Rule 2261 (Disclosure of Financial Condition), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon request.

d. Duplicate Copies of Monthly Statements to Guarantors (NYSE Rule 409T(g))

NYSE Rule 409T(g) provides that member firms 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. The proposed rule change would eliminate NYSE Rule 409T(g) because this provision, which provides that members should send duplicate account statements to guarantors, would be addressed by the general requirement in proposed Supplementary Material .02 to obtain written instructions from the customer to send account statements to a third party.

e. Holding Customer Mail (NYSE Rule 409T.10(7))

As noted above, the proposed rule change would eliminate the concept of holding customer mail set forth in paragraph (7) under NYSE Rule 409T.10, as a member's obligations with respect to this activity are addressed in Rule 3150, and proposed

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[26] 17 CFR 240.17a-5.

Supplementary Material .04 would expressly permit a member to hold customer mail consistent with Rule 3150.

2. NYSE Rule Interpretation 409T

a. Use of Third Party Agents (NYSE Rule Interpretation 409T(a)/03)

In general, NYSE Rule Interpretation 409T(a)/03 requires a written representation or undertaking from the member organization to the NYSE, representing that certain conditions are satisfied when using third party agents (e.g., service bureaus or other independent entities) to prepare and transmit customer account statements.[27] The proposed rule change would eliminate NYSE Rule Interpretation 409T(a)/03 because such arrangements are addressed under Rule 4311 and other relevant guidance.[28]

b. Standards for Holding Mail for Foreign Customers – Rule 409T(b)(2) Waivers (NYSE Rule Interpretation 409T(b)/01)

The proposed rule change would eliminate NYSE Rule Interpretation 409T(b)/01, which provides guidelines for holding confirmations, statements, and broker-dealer

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27 Under NYSE Rule Interpretation 409T(a)/03, a member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with NYSE Rule 409T(a), and that the member organization has developed procedures and controls for reviewing and testing the accuracy of statements, and will retain copies of all such statements in accordance with applicable books and records requirements. In addition, NYSE Rule Interpretation 409T(a)/03 addresses the allocation of responsibilities for preparation and transmissions of statements under a carrying agreement and provides that 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 or transmit such statements.

28 See Notice to Members 05-48 (July 2005) (describing a member's responsibilities when outsourcing activities to third party service providers).

financial statements for foreign customers. A member's obligations with respect to holding customer mail are addressed in Rule 3150, which is referenced in proposed Supplementary Material .04.

D. Technical Changes to Other FINRA Rules

The proposed harmonization of the NYSE provisions with Rule 2231 would require technical amendments to Interpretative Material ("IM")-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) and IM-1013-2 (Membership Waive-In Process for Certain NYSE American LLC Member Organizations), which describe a waive-in membership application process for some member organizations of the NYSE and NYSE American LLC. In general, subject to specified terms set forth in these interpretative materials, a firm admitted to FINRA membership through either of these provisions (i.e., "waived-in firm") is not subject to the remaining FINRA rules that have yet to be harmonized with their corresponding NYSE rules or interpretations under the Temporary Dual FINRA-NYSE Member Rule Series. Currently, these rules are Rule 2231 and the NYSE provisions. FINRA is proposing to amend IM-1013-1 and IM-1013-2 to remove the reference to Rule 2231 as all waived-in firms will become subject to Rule 2231, as amended herein.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 365 days following publication of the Regulatory Notice announcing Commission approval of the proposed rule change.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[29] 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 further the purposes of the Act because the proposed rule change will help protect investors and the public interest by largely retaining the existing requirements under Rule 2231 that promotes effective regulation of account statements. FINRA believes that by proposing several new supplementary materials that provide clarity in areas such as compliance with other FINRA rules, the use of electronic delivery, transmission of account statements to other persons or entities, information to be disclosed on statements, assets externally held, the use of logos and trademarks, and the use of summary statements, the proposed rule change will establish consistent industry standards pertaining to the substance and the presentation of customer account statements.

In addition, FINRA believes proposed Supplementary Material .02, as revised in light of comments received in response to the Notice, strikes an appropriate balance to protect investors by ensuring that customers continue to receive their account statements while reducing the proposed rule change's impact on member firms. As discussed previously, these revisions include: (1) confining the scope only to customer account statements; (2) adding a limited exception from the general requirement to continue providing account statements to customers who have authorized third party delivery by

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29 15 U.S.C. 78o–3(b)(6).

permitting member firms to cease sending such statements to customers upon written instructions from a court-appointed fiduciary acting on behalf of the customer; and (3) clarifying that, notwithstanding the general requirement to obtain written instructions from a customer to establish third party delivery of account statements, firms may provide duplicate customer account statements under Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rules.

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change and its potential economic impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to meet its regulatory objectives.

A. Regulatory Need

Rule 2231 and the NYSE provisions have remained substantively unchanged since their adoption into the consolidated FINRA rulebook. Having two sets of rules with differing application or scope may prevent firms from consistently applying the rules and thus create uncertainties in compliance and lead to unnecessary costs. In an effort to harmonize these rules, FINRA is proposing to amend Rule 2231 to incorporate guidance and several provisions that exist under the NYSE provisions and in other FINRA rules as supplementary materials. Notably, FINRA is proposing to adopt new

Supplementary Material .02, derived in large part from NYSE Rule 409T(b), but with some adjustments from the terms set forth in the Notice that would address a situation in which a customer may want to transmit account statements to other persons or entities, and stop receiving statements due to particular circumstances. As a result of the proposed harmonization, FINRA is proposing to eliminate the NYSE provisions in their entirety as they are, to some degree, duplicative of Rule 2231 or would become obsolete by the proposed rule change.

B. Economic Baseline

The current provisions governing customer account statements under Rule 2231 and the NYSE provisions, and other related rules and current industry practices serve as an economic baseline for the proposed rule change. While all FINRA members are subject to Rule 2231, dual members are also subject to several additional requirements existing only in the NYSE provisions. As of December 31, 2020, there are 3,435 FINRA members, of which 134 are dual members.

C. Economic Impacts

The substantive changes to Rule 2231 described in this proposed rule change relate to the supplementary materials, most of which are derived from the NYSE provisions and for that reason, the economic impacts herein focus primarily on the proposed supplementary materials, particularly proposed Supplementary Material .02.

Proposed Supplementary Material .02

In general, proposed Supplementary Material .02 addresses a situation where a customer instructs the firm, in writing, to send his or her account statements to another person or entity and limits the customer's ability to stop receiving them, except where

there is a court-appointed fiduciary.[30] One issue some commenters raised was the requirement for firms to continue delivering account statements to the customer even where the customer directs the firm, in writing, to send the customer's account statements to a third party, and does not wish to continue receiving them due to health concerns, among other reasons. For example, SIFMA expressed the belief that the requirement to continue delivering account statements to the customer may result in the fraud that will likely arise from identity theft where account statements are sent to a customer against his or her request or against the request of a person with the legal authority to act on behalf of the customer. SIFMA added that proposed Supplementary Material .02 may have a material negative impact on the client experience and serve to drive clients to advocacy models without this requirement.

FINRA believes that the customer's ability to stop receiving his or her own account statements when there is a court-appointed fiduciary strikes the appropriate balance between the investor protection functions of Rule 2231 to ensure that the customer is able to monitor and verify the transactions occurring in the customer's account and the concerns raised by some commenters about ceasing the delivery of account statements to a customer under compelling circumstances. FINRA recognizes that some customers may incur supplemental costs to conform to the continuous delivery requirement in proposed Supplementary Material .02. Customers who do not wish to receive their account statements may bear some burden in controlling and destroying

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30 Proposed Supplementary Material .02 also provides that members are not required to obtain prior written consent to send customer account statements in compliance with Rule 2070, Rule 3210, or other similar applicable federal securities laws, rules, and regulations in accordance with the requirements of such rule.

them. Alternatively, customers may incur costs associated with seeking the exception through a court-appointed fiduciary. Customers may incur the direct cost of seeking a court-appointed fiduciary as well as the indirect cost of giving away other rights not associated with account statements when a fiduciary is appointed by the court. To alleviate the potential compliance costs associated with continuous statement delivery to customers and the concern over possible identity theft and fraud, members could encourage, if appropriate, their customers to choose to receive their statements electronically in a manner consistent with proposed Supplementary Material .03, a further discussion of which follows below.

In addition, firms may also incur costs to conform to proposed Supplementary Material .02 including the tracking and retention of each customer's written instructions and official documents related to the court appointment of a fiduciary, and where statements are delivered in paper format, the costs of additional postage, printing, and other attendant expenses.[31] However, FINRA understands that in practice, some firms already provide continuous account statement delivery to their customers even with third party delivery arrangements in place except in special circumstances (e.g., validated medical excuse), and that concerns related third party delivery arrangements rarely arise.

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[31] In the Notice, FINRA asked specific questions concerning, among other things, the direct and indirect costs that may result from proposed Supplementary Material .02. See generally Notice, Section C (Request for Comment). SIFMA commented that a firm with approximately 7.4 million accounts provided a cost estimate of over 14 million dollars just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02, excluding substantial staffing and technology costs.

Other Proposed Supplementary Materials

Proposed Supplementary Materials .01, .03, and .04, respectively, would remind firms of existing requirements under Rule 4311, SEC guidance on using electronic media to satisfy delivery obligations, and Rule 3150. The NYSE provisions that FINRA is proposing to incorporate into Rule 2231 as Supplementary Materials .05, .06, .07, and .08 would address, respectively, the information to be disclosed on statements, externally held assets, the use of logos and trademarks, etc., and the use of summary statements. FINRA does not expect these proposed harmonizing amendments to Rule 2231 to impose material burdens on member firms as these proposed supplementary materials are substantially similar to existing rules or otherwise consistent with current guidance.

D. Alternatives Considered

FINRA considered various suggestions in developing the proposed rule change. The proposed rule change reflects the changes that FINRA believes at this time to be the most appropriate for the reasons discussed herein.

1. Frequency of Delivery of Account Statements to Customer

In the Initial Rule Filing and Amended Rule Filing, FINRA had considered amending then NASD Rule 2340 to change the frequency of the delivery of account statements to customers from quarterly to monthly. The comments FINRA received in response to these prior filings suggested that such a proposed change would result in significant compliance costs for the industry without commensurate benefits for customers, and could create conflicts with some securities laws and regulations, among other things. Based on these comments, FINRA has determined to retain the quarterly

delivery requirement for customer accounts statements currently set forth in Rule 2231(a).[32]

2. Definition of "General Securities Member"

Currently, under Rule 2231(d)(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 SEA 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."[33] In the Notice, FINRA specifically requested comment on potential clarifications to the definition of "general securities member."[34] At this time, FINRA is not proposing to amend Rule 2231(d)(2).

3. Exception from the General Requirement to Send Account Statements to Customers

Proposed Supplementary Material .02 as presented in the Notice did not contemplate an exception from the firm's general requirement to continue sending account statements to customers. In the Notice, FINRA specifically requested comment on whether the proposal should include specific exclusions that would allow members not to send account statements to customers under identified situations. FINRA also specifically sought comment on current industry practices, safeguards, or best practices with respect to sending account statements to a customer who is disabled or

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32 The account delivery frequency aligns with NYSE Rule 409T(a).

33 The NYSE provisions do not have a corresponding definition.

34 FINRA did not receive comments in this area, but FAF noted that registered investment advisors ("RIAs") do not fall under the definition.

incapacitated, resides in a nursing home, has a trusted person to review statements, or where there is a valid POA or guardianship established.

In consideration of the comments to the Notice, FINRA has modified proposed Supplementary Material .02 from the terms outlined in the Notice. In addition to limiting the scope of the proposed supplementary material to only customer account statements and omitting the specific reference to POA, the proposed provision would create a limited exception from the general requirement for firms to continue to deliver account statements to a customer in cases where there is a court-appointed fiduciary acting on behalf of the customer. The other aspects of the proposed supplementary material would remain substantively unchanged from the terms set forth in the Notice, including the option to send account statements to the customer either in paper format or electronically as provided in proposed Supplementary Material. 03.

FINRA notes that members could request customers that provide written instructions to the member to send account statements to other persons or entities to authorize the member to satisfy the requirement to continue delivering statements to the customer through electronic delivery consistent with proposed Supplementary Material .03. In this manner, FINRA believes that member firms could both mitigate the concerns relating to the costs of postage, printing and mailing account statements, and address concerns relating to possible identity theft and fraud in circumstances where account statements are sent. With respect to the general requirement for firms to continue to deliver account statements to the customer even when the customer has directed the firm, in writing, to send account statements to other persons or entities, FINRA understands that even where there is a third party delivery arrangement in place, in general, firms

continue to send account statements to their customers except under extenuating circumstances (e.g., validated medical excuse). This industry practice accords with Rule 2231(a), which reflects the core principle that customers should be fully informed of the status of their accounts.

FINRA believes that proposed Supplementary Material .02, as modified, lends the appropriate balance between ensuring that customers continue to receive their account statements in accordance with Rule 2231(a) to ensure that they have the ability to monitor their account activity while recognizing that there may be special circumstances where a firm may stop the delivery of account statements to customers.

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

The proposed rule change was published for comment in the Notice 14-35 Proposal. FINRA received 14 comment letters in response to the Notice 14-35 Proposal. A copy of the Notice 14-35 Proposal appears as Exhibit 2d. A list of the comment letters received in response to the Notice 14-35 Proposal appears in Exhibit 2e.[35] Copies of the comment letters received in response to the Notice 14-35 Proposal appear as Exhibit 2f.

Several commenters expressed general support for the purpose and intent of the Notice 14-35 Proposal.[36] In addition, several commenters noted that the proposed rule change includes meaningful changes in response to comments on the Initial Rule Filing.[37] However, as discussed below, commenters to the Notice 14-35 Proposal objected to

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35 All references to commenters are to the comment letters as listed in Exhibit 2e.

36 See GSU, PIRC, SIFMA, WFA, and Wulff.

37 See Edward Jones, FSI, PIRC, SIFMA, WFA, and Wulff.

limiting a customer's ability to decline receiving statements, particularly where the customer's health or capacity was in question. In addition, the commenters raised concerns regarding existing customer account relationships with third party delivery arrangements in place. FINRA considered the commenters' concerns, including the attendant operational aspects of sending account statements to customers and third parties. The comments and FINRA's responses are set forth below.

A. General (Rule 2231(a))

1. Quarterly Customer Account Statement Delivery Requirement

Currently, Rule 2231(a) generally requires a 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, except if carried on a DVP/RVP basis. NYSE Rule 409T(a) similarly establishes a quarterly account statement delivery requirement.

Several commenters expressed support for retaining the delivery frequency in the current rule, noting that the quarterly delivery requirement is consistent with industry practices.[38] NASAA, however, urged FINRA to revert to the monthly delivery frequency as originally proposed in the prior rule filings, stating that monthly delivery would allow customers to better monitor their accounts and identify any potential unauthorized fraudulent activity. PIRC recommended that customers should have the option of receiving quarterly or monthly statements based on their own individual needs, and also recommended that customers be provided with the option to receive account

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38 See Edward Jones, FSI, SIFMA, and WFA.

statements electronically and to make available to customers a status of their accounts via telephone or online at the customer's request.

FINRA notes that nothing in the rule, in its current form, precludes a firm from sending account statements to a customer on a more frequent schedule in a particular medium to meet the needs of the customer. Consistent with the Notice 14-35 Proposal, FINRA is proposing to retain the existing requirement in Rule 2231(a) for members to send customer account statements at least once each quarter.

2. Securities Investor Protection Act ("SIPA") Disclosure Requirement

Rule 2231(a) requires a general securities member to include in the account statement a statement advising a customer to report promptly any inaccuracy or discrepancy in that person's account to the member firm, and that any oral communication to the member firm should be reconfirmed in writing to further protect the customer's rights, including rights under SIPA. NYSE Rule 409T(e)(2) similarly requires a member organization to include a legend in the account statement with the same advice.

PIRC expressed concerns with the SIPA disclosure requirement in Rule 2231(a). PIRC stated that it has encountered firms that have used the disclosure as a defense to claims in arbitration, suggesting that the disclosure only appears to be intended to protect investors. PIRC recommended that FINRA amend this portion of the rule to ensure that such disclosure cannot be used against a customer in a dispute.

In 2001, the then U.S. General Accounting Office, now known as the Government Accountability Office ("GAO"), issued a report in which it made recommendations to the SEC and SIPC about ways to improve the information available to the public about SIPC

and SIPA.[39] Among other things, the GAO recommended that self-regulatory organizations, such as FINRA, consider requiring firms to include information on periodic statements or trade confirmations to advise investors that they should document account discrepancies in writing. In response to that recommendation, Rule 2231(a) was amended in 2006 to require that account statements include a statement advising each customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm and clearing firm (where these are different firms), and such statement also must advise the customer that any oral communication should be re-confirmed in writing to further protect the customer's rights, including rights under SIPA.[40] Written documentation is important because in the event a firm goes into SIPC liquidation, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise.[41] As FINRA noted in the 2006

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39 See Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors, GAO-01-653 (May 25, 2001), https://www.gao.gov/products/gao-01-653.

40 See Securities Exchange Act Release No. 54411 (September 7, 2006), 71 FR 54105 (September 13, 2006) (Order Approving File No. SR-NASD-2004-171), as corrected by Securities Exchange Act Release No. 54411A (October 6, 2006), 71 FR 61115 (October 17, 2006). See also Notice to Members 06-72 (December 2006).

41 See supra note 40. SIPC advises investors who discover an error in a confirmation or statement to immediately bring the error to the attention of their brokerage firm in writing and to keep a copy of any such writing. See SIPC, How SIPC Protects You: Understanding the Securities Investor Protection Corporation (2015), https://www.sipc.org/media/brochures/HowSIPCProtectsYou-English-Web.pdf. More recently, FINRA, NASAA, and SIPC jointly issued an investor alert discussing the importance of regularly reviewing brokerage account statements, and the steps a customer should take to document concerns with an error on a brokerage statement or trade confirmation. See FINRA Investor Alert, It Pays to Pay Attention to Your Brokerage Account Statements (December 18, 2019),

rule filing to amend Rule 2231(a), the disclosure requirement does not impose any limitation whatsoever on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally.[42] Further, a customer's failure to promptly raise such concerns, either in writing or orally, does not preclude a customer from reporting an inaccuracy or discrepancy in his or her account during any SIPC liquidation of his or her brokerage or clearing firm.[43] FINRA believes that the provision continues to enhance customer protection in accordance with GAO's recommendation and has determined to maintain Rule 2231(a) pertaining to SIPA disclosure in its current form.

B. DVP/RVP Accounts (Rule 2231(b))

Currently, Rule 2231(b) and NYSE Rule 409T(a) provide that quarterly account statements do not need to be sent to a customer if the customer's account is carried solely for execution on a DVP/RVP basis, subject to specified conditions.[44]

Auerbach recommended that Rule 2231 provide an exemption from the requirement to issue periodic account statements in the case of DVP/RVP customers of a

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https://www.finra.org/investors/alerts/pay-attention-brokerage-account-statements. See also NASAA Investor Advisory, It Pays to Pay Attention to Your Brokerage Account Statements" (December 2019), https://www.nasaa.org/53392/53392/?qoid=investor-advisories and SIPC News Release, It Pays to Pay Attention to Your Brokerage Account Statements, https://www.sipc.org/news-and-media/news-releases/20191218).

42 See supra note 41.

43 See supra note 41.

44 These rules do not qualify or condition the obligations of members under SEA Rule 15c3-3(j)(1) concerning quarterly notices of free credit balances on statements.

member firm that use a third party custodian selected by the customer that is required to issue periodic account statements to the customer. Auerbach stated that in such cases, periodically issued brokerage firm account statements are duplicative, unnecessary and increase costs for the broker, the customer, and the third party custodian, and such accounts statements will compel the customer and its custodian to reconcile their records with the statement from the broker and require all three parties to expend additional time, energy, and cost on a matter that is already handled through the normal clearance and settlement process. SIFMA requested confirmation that members may treat an institutional customer trading pursuant to discretionary authority in the DVP/RVP account or the authorized person or institution that opened the account as the "customer" for these purposes and collect and maintain the consents from such institutions, instead of the underlying customers.

FINRA believes that the issues raised by the commenters are better addressed through FINRA's interpretative guidance process so that FINRA has the opportunity to fully consider the relevant facts and circumstances. In addition, FINRA emphasizes that the rule in its current form allows a DVP/RVP customer to affirmatively elect not to receive account statements. By requiring the customer's affirmative consent, the customer's ability to receive quarterly statements is preserved, and the member is precluded from unilaterally terminating delivery of customer statements. Moreover, the customer is able to promptly receive particular account statements upon request, and promptly reinstate the delivery of account statements upon request.[45]

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[45] See Notice to Members 06-68 (November 2006).

C. Definitions (Rule 2231(d))

Rule 2231(d)(2) provides that 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 SEA 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 [Rule 2231]." FAF noted that RIAs need to have access to customer information in order to perform their duties to their customers or clients. FAF expressed concern that RIAs are not covered by the definition of "general securities member" in Rule 2231(d) and consequently, RIAs would not be entitled to receive customer or client information.

The term "general securities member" identifies which FINRA member firms are required to deliver account statements, not which firms are entitled to receive such statements. Moreover, FINRA notes that nothing in proposed Supplementary Material .02 would preclude a customer from providing written consent to his or her member firm to send account statements to an RIA, subject to the conditions set forth in the proposed rule.[46]

D. Compliance with Rule 4311 (Carrying Agreements) (Proposed Supplementary Material .01)

Proposed Supplementary Material .01 to Rule 2231 would remind firms that Rule 4311(c)(2) generally requires each carrying agreement, in which accounts are carried on a fully disclosed basis, to expressly allocate to the carrying firm the responsibility for the

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46 RIAs also should consider their obligations under the Investment Advisors Act of 1940, including Rule 206(4)-2 (Custody of Funds or Securities of Clients by Investment Advisors).

safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.[47] Rule 4311(c)(2) provides that the carrying firm may authorize the introducing firm to prepare and transmit such statements on the carrying firm's behalf with the prior written approval of FINRA.

SIFMA requested clarification from FINRA regarding the obligation to obtain written authorization from a customer regarding the mailing of statements to a third party, and the ability of a clearing firm to rely on introducing brokers in asserting the authenticity of a written approval. SIFMA stated that introducing firms are in the best position to know the customer and, as long recognized through contract and in practice, and as permitted under Rule 4311, introducing firms are typically allocated the responsibility for opening accounts as well as maintaining and updating customer addresses, which ultimately drives the delivery of account statements.

FINRA agrees that consistent with guidance on the allocation of responsibilities between carrying firms and introducing firms and as permitted under Rule 4311, clearing firms may reasonably rely on introducing firms with respect to updating and keeping track of required consents and addresses for third parties that may receive account statements under this rule. However, both carrying firms and introducing firms must have policies and procedures in place to ensure that their respective responsibilities are met.[48]

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47 See Regulatory Notice 11-26 (May 2011).

48 See Regulatory Notice 09-64 (November 2009) (stating that while firms may allocate responsibility for complying with particular requirements between the clearing and the introducing firms, both firms must have policies and procedures in place to ensure that their respective responsibilities are met).

E. Transmission of Customer Account Statements to Other Persons or Entities (Proposed Supplementary Material .02)

Many commenters, while supportive of the Notice 14-35 Proposal overall, expressed views on proposed Supplementary Material .02.[49] NAELA expressed doubt that the proposed provision would protect vulnerable persons (e.g., persons with disabilities or who are incapacitated) in any meaningful way. The views of many other commenters generally related to the scope of the proposed provision, customer instructions to establish delivery of the customer's account statements to a third party, the circumstances that may warrant an exception to the general requirement for a firm to continue delivering account statements to the customer even where there is a third party delivery arrangement in place, operational concerns, and implementation.

1. Scope

In the Notice 14-35 Proposal, proposed Supplementary Material .02 pertained to account statements "or other communications" relating to the customer's account. Commenters expressed concerns and sought clarification relating to the scope of the proposed provision.

SIFMA raised concerns with the inclusion of "other communications," stating that the proposed supplementary material could include a host of operational communications with third parties (e.g., custodians, issue and transfer agents, counterparties to trades, banks in connection with disbursements and deposits and a member firm's own vendors) where firms need to send "communications" about a customer's account in order to provide a service requested for the customer. SIFMA requested clarity regarding the

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[49] See Edward Jones, FAF, Feaver, FSI, GSU, Malecki, NAELA, NASAA, PIRC, SIFMA, WFA, and Wulff.

scope of "other communications" in the context of the proposed rule. FINRA agrees with the concerns raised by SIFMA in this regard and for clarity, has adjusted the language by deleting the references to "or other communications" from proposed Supplementary Material .02 so that the scope of the propose provision is limited solely to customer account statements.

SIFMA also sought clarification pertaining to the implications of Supplementary Material .02 on a firm's existing obligations under SEA Rule 17a-3(a)(17)(B)(2) and FINRA Rule 3110(c)(2) to confirm a customer's address change. FINRA notes that proposed Supplementary Material .02 is not intended to impose additional requirements that would impact a firm's current obligations to validate a change in address for a customer under the applicable SEA and FINRA rules.

2. Customer Instructions to Deliver Account Statements to Third Party

Proposed Supplementary Material .02 provides that in general, a member may not send account statements relating to a customer's account to other persons or entities unless the customer has provided written instructions to the member to send such statements to a designated third party. However, in order to comply with Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations, proposed Supplementary Material .02 would provide that a firm is not required to obtain written instructions from the customer to meet the requirements of such applicable rules or regulations.

Several commenters expressed views on the general requirement for firms to obtain written instructions from customers.[50] PIRC expressed its support for the general requirement. NAELA noted that persons with disabilities or who are incapacitated are unlikely able to send written direction to their financial institution to send account statements to a third party. Two commenters questioned the need for written instructions, suggesting that oral instructions should suffice.[51] Other commenters recommended imposing additional methods to validate customer instructions and the nature of the relationship between the customer and third party.[52]

a. Oral Instructions

Two commenters recommended that oral consent of the customer, combined with prominent disclosure on the customer's account statements, identifying the third party or interested party that is also receiving statements or other appropriate documentation of such instruction, would lend more flexibility to firms and customers to establish third party delivery of account statements.[53] Edward Jones explained that there was a regulatory distinction between adding a third party to an account to receive account statements and directing all account statements to a third party instead of to the customer, noting that when a third party is being added to an account, a more effective approach would be to require the oral consent of the customer. SIFMA added that oral instructions would prevent the operational challenge of obtaining written consent in instances where

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50 See Edward Jones, FAF, NASAA, and SIFMA.

51 See Edward Jones and SIFMA.

52 See Malecki and NASAA.

53 See Edward Jones and SIFMA.

written consent is impracticable. These commenters stated that oral consent and disclosure would be consistent with current industry practice.

FINRA notes that similar views were expressed by commenters to the prior rule filing,[54] and FINRA continues to maintain the view that instructions from customers with respect to the delivery of account statements should be in writing to ensure proper consent is received and can be evidenced. FINRA believes that oral instructions are insufficient in this context due to several concerns such as identify theft and privacy concerns, among others, and that firms must be able to document and record a customer's consent to send account statements to a third party. FINRA has permitted firms to act on oral instructions from customers in other circumstances (e.g., trading instructions) largely to allow customer and firms to act expeditiously to execute securities transactions that are time sensitive in nature. However, the delivery of customer account statements to a third party presents no such concerns and therefore must require written customer consent for this delivery arrangement.

b. Written Instructions from Third Party or Account Holder of Joint Account

Two commenters raised practical concerns with procuring written instructions from customers.[55] FAF noted that some third parties such as RIAs or retirement custodians have a need to receive customer account statements in order to perform their duties for customers, and these third parties that commonly receive customer account statements may have their own paperwork or form that a customer completes to authorize

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54 See supra note 5.

55 See FAF and SIFMA.

a designated third party to receive account statements. FAF recommended adjusting the language in the proposed supplementary material to permit a firm to treat a customer's completion of the third party's own paperwork or form as the written instructions from the customer, suggesting that this adjustment would represent a more practical approach to the process by permitting a firm to accept written instructions to authorize the transmission of account statements to a third party directly from such third party rather than from the customer directly. In the alternative, FAF recommended allowing firms to send account statements to third parties without customer consent "by simply relying on the nature of the third party[,]" reasoning that third parties such as RIAs or custodians of individual retirement accounts "have a need to receive a duplicate statement of the client for the client's benefit." FINRA believes that FAF's recommendation does not assure the goal of limiting provision of customer account information to situations where the customer affirmatively instructed or consented to delivery of account statements to third parties. Moreover, FINRA believes that proposed Supplementary Material .02 in its current form would not preclude a customer from using a thirty party's form or other template to help a customer convey the written instructions directly to the firm to establish the delivery account statements to a third party such as an RIA or other custodian of customer assets.

With respect to accounts that have more than one owner, SIFMA noted that there could be significant operational challenges in requiring all joint account holders to consent to a third party delivery arrangement requested by one of the account holders. SIFMA expressed the belief that in such cases, a firm should be able to accept instructions from one accountholder to send statements to a third party, provided the

accountholder making the request would not be seeking to suppress the delivery of customer account statements to the other joint accountholder(s) in accordance with the rule. FINRA believes that the proposed provision would contemplate the situation SIFMA described to require a customer, irrespective of the type of account—joint or individual—to provide written instructions to the firm to send account statements to a third party without affecting the delivery of account statements to the other joint accountholders.

c. Validation of Customer Instructions

Proposed Supplementary Material .02 does not specify the manner in which firms must validate a customer's written instructions or the nature of the relationship between the customer and third party receiving the account statements. Two commenters recommended ways to verify a customer's instructions and the nature of the customer's relationship to the third party.[56]

NASAA recommended rigorous verification of a customer's instructions by requiring a firm to obtain a medallion signature guarantee or notarization to help ensure that a customer in fact wishes to have the account statements delivered to a third party. NASAA also recommend requiring the firm to provide the customer with notices, delivered on the same frequency as account statements, indicating that the account statements have been delivered to the third party pursuant to the customer's instructions, and directing the customer to contact the firm to inform the firm if he or she no longer desires to have the account statements delivered to the designated third party. Feaver seemed to express support for a customer's ability to send account statements to a third

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[56] See Malecki and NASAA.

party, but also seemed to suggest that some verification or confirmation practices as to the identity of the third party be imposed. Malecki expressed its support for the ability for a customer to elect to have account statement delivered to a third party, noting that the ability for a family member, tax professional, estate lawyer or trusted friend to be able to obtain copies of statements may be important to quickly identify and prevent fraud. However, Malecki suggested that the proposed provision go further and require a firm to identify the relationship between the customer and the third party receiving the account statements in order to clearly delineate the roles of the respective parties, noting that a firm should clearly understand the third party's relationship to the customer.

FINRA believes that a firm's obligation to conduct the requisite validation pertaining to servicing a customer's account are addressed under Rule 2090 (Know Your Customer). Rule 2090 requires a firm to use reasonable diligence in regard to the opening and maintenance of every account, to know the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer. The "essential facts" to "knowing the customer" include, among other things, those facts required to act in accordance with any special handling instructions for the account and understand the authority of each person acting on behalf of the customer. Thus, under Rule 2090, member firms are generally required to know the names of any persons authorized to act on behalf of a customer and any limits on their authority that the customer establishes and communicates to the member firm.

d. Exception to the Requirement to Obtain Instructions from Customer

As noted above, proposed Supplementary Material .02 would clarify that notwithstanding the general requirement for a firm to obtain written instructions from the

customer to transmit accounts statements to a third party, a firm may provide such statements under Rule 2070, Rule 3210, or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rules or regulations.

SIFMA expressed its appreciation for this clarification, but stated that the exception should be broadened to permit firms to send customer account statements to an employer that is a registered investment company or RIA, both of which are also required to obtain this information about their associated person's personal securities dealings under Rule 17j-1 under the Investment Company Act of 1940[57] and the provisions of an investment advisor's code of ethics as required by Rule 204A-1 under the Investment Advisors Act of 1940,[58] respectively. In response to this comment, FINRA has adjusted the language in proposed Supplementary Material .02 to refer, in general terms, to other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rule.

3. The Requirement to Continue Delivery of Account Statements to Customer Even with Third Party Delivery Arrangement in Place

Consistent with the Notice 14-35 Proposal, the proposed rule change would limit a customer's ability to decline receiving account statements by requiring a firm to continue sending account statements to the customer even where the customer directs the firm, in writing, to send the customer's account statements to a third party. This general requirement is intended to serve investor protection functions by ensuring that the

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57 17 CFR 270.17j-1.

58 17 CFR 275.204A-1.

customer is able to monitor and verify the transactions occurring in the customer's account. The proposed provision accords with the Commission's policy view in the context of the delivery of transaction confirmations to a third party (e.g., a fiduciary); that is, where a customer has duly waived receipt of confirmations, the customer may not waive the receipt of periodic account statements.[59]

With the exception of GSU favoring the continuous statement delivery requirement, several other commenters expressed concerns with it, asserting, in general, that the proposed provision would undermine a customer's express wishes to decline receiving account statements and would not further customer protections by increasing the risk for fraudulent activity, particularly for investors who are elderly, disabled or incapacitated, or who rely on a caregiver in an assisted living facility or at home.[60] SIFMA offered several suggestions for FINRA to consider, including to delete the

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59 In adopting amendments to SEA Rule 10b-10 in 1994, the Commission acknowledged that a customer may waive the personal receipt of an immediate confirmation in the context of where a fiduciary has discretion over the customer's account under the following conditions: "the broker-dealer must (1) obtain from the customer a written agreement that the fiduciary receive the immediate confirmation; and (2) send to the customer a periodic report, not less frequently than quarterly, containing the same information that would have been contained in an immediate confirmation. [Citation omitted]. The customer may not waive this periodic report. [Citation omitted]." See Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612, 59614 (November 17, 1994) ("SEA Rule 10b-10 Release"). As indicated in the Amended Rule Filing, FINRA reiterates the reminder to members that they remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that members may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (e.g., the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and Rule 2231, as proposed herein, is not intended to alter any such conditions or requirements.

60 See Edward Jones, FSI, NAELA, NASAA, SIFMA, WFA, and Wulff.

proposed general continuous delivery requirement or in the alternative, follow the existing approach under NYSE Rule 409T(b). Other suggestions included creating exceptions to the general delivery requirement under specified circumstances (e.g., incapacitation)[61] or permitting a customer to opt-out of receiving statements.[62] The comments to proposed Supplementary Material .02 as presented in the Notice 14-35 Proposal are set forth below.

a. The Existing Approach Set Forth Under NYSE Rule 409T(b)

As described above, NYSE Rule 409T(b) currently allows a customer to instruct a firm to direct account statements, confirmations or other communications to a third party holding a POA over the account where the customer either provided the firm written instructions or the firm continued to send the customer duplicate copies of the statements, confirmations or other communications. Thus, under NYSE Rule 409T(b), a customer who has declined or waived the receipt of account statements may then effectively forego the opportunity to directly monitor account activities.

SIFMA noted that in the SEA Rule 10b-10 Release, the Commission did not invalidate NYSE Rule 409T(b). However, when discussing the application of the Commission's policy and its relationship with NYSE Rule 409T, the Commission suggested that NYSE Rule 409T was less restrictive than the Commission's policy view by noting that under NYSE Rule 409T, a customer "who waived receipt of the immediate confirmation would receive more information with his quarterly account statement than

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61 See SIFMA and Wulff.

62 See PIRC.

that currently required under NYSE Rule [409T]. To the extent the rule of the NYSE, or any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern. Thus, an NYSE member wishing to take advantage of a waiver would be required to adhere to these Commission requirements in addition to any obligations imposed by Rule [409T]"[63]

SIFMA observed that proposed Supplementary Material .02 would be more restrictive than NYSE Rule 409T(b), particularly as applied to the delivery of account statements in connection with the custody of advisory accounts, noting that duplicate account statements are not required to be sent to customers when a designee has been appointed under Rule 206(4)-2 of the Investment Advisers Act of 1940 ("Advisers Act").[64] SIFMA expressed the belief that NYSE Rule 409T(b) has served both the investing public and the industry well, and that FINRA has not established widespread complaints or problems in this area that would justify such a substantial, potentially risky, and costly expansion of account statement delivery obligations. SIFMA urged FINRA to delete the general requirement or alternatively, retain the more flexible approach in NYSE Rule 409T(b). By taking the approach in NYSE Rule 409T(b), SIFMA expressed the view that firms would then be able to honor the requests of customers, and those with appropriate legal standing on behalf of their customers, to direct account statements to a designated third party and avoid the additional costs and potential account security concerns associated with sending account statements to the customer's address of record. SIFMA recommended that FINRA amend proposed Supplementary Material .02 to

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63 See SEA Rule 10b-10 Release, supra note 59, at 59 FR 59614 n.36.

64 17 CFR 275.206(4)-2.

model the requirements of NYSE Rule 409T(b) by replacing "and" with "or" in the proposed rule text to provide firms with greater flexibility to comply with the proposed rule and defining the term "customer," for purposes of proposed Supplementary Material .02 to mean a person with the legal authority to act on behalf of an accountholder, including an attorney-in-fact, a court-appointed fiduciary or person with similar legal authority.

SIFMA also noted that firms are currently subject to rules that mitigate concerns that a customer might be financially exploited by an individual who has authority over the customer's financial affairs. For example, SIFMA stated that Rule 2090 requires a firm to use reasonable diligence in regard to the opening and maintenance of every account, to know the essential facts concerning every customer, and essential facts would include those about anyone who has authority over a customer's account. In addition, SIFMA noted that a firm is required to have reasonable procedures in place to identify and react to "red flags" that might indicate the occurrence of potential fraud.

b. Create Exceptions to the General Requirement to Continue Delivery of Account Statements to Customer

In the Notice 14-35 Proposal, FINRA requested comment on the situations that would merit an exception from the general requirement to continue delivery of account statements to a customer. Several commenters expressed views on the general requirement for a firm to continue delivering account statements to the customer even where there is a third party delivery arrangement in place, stating that imposing such a requirement as a matter of course would increase a customer's risk of exposure to fraud

or other misconduct.[65] FINRA recognizes that in some cases, it may not be in the customer's interest to continue receiving account statements when there is an arrangement to deliver the statements to a third party. In response to comments, FINRA has adjusted proposed Supplementary Material .02 as presented in the Notice 14-35 Proposal by creating an exception that would permit a "court-appointed fiduciary" (as that term is described in the proposed provision) to stop sending account statements to the customer upon written instructions from the court-appointed fiduciary, and other specified conditions. Absent a court-appointed fiduciary, a firm cannot cease delivering account statements to a customer. Further, FINRA believes that a customer may authorize the firm to satisfy the requirement to continue delivering account statements through electronic delivery consistent with proposed Supplementary Material .03, which would eliminate the need for delivery of physical statements to the customer's home, while still providing the customer the opportunity to review their account statements in a timely manner. FINRA believes that proposed Supplementary Material .02, as adjusted, creates an appropriate balance between investor protection and the concerns raised by the commenters. As set forth below, some commenters described a variety of circumstances that should warrant an exception to the general requirement. These circumstances relate to customers with legal representatives and other trusted contacts; customers who are elderly, disabled or incapacitated; and foreign and high net worth customers.

(I) Legal Representative and Other Trusted Contacts

SIFMA expressed concern that proposed Supplementary Material .02 could potentially erode the legal authority of the person granted a POA and may potentially

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65 See Edward Jones, FSI, NASAA, SIFMA, WFA, and Wulff.

create a conflict with state laws governing POAs. SIFMA noted that 17 states have laws that outline penalties for financial institutions that refuse to respect the legal standing of a person acting with the authority of a POA. Two commenters expressed concern that the proposed provision would also prevent the operability of a springing POA or limit its usefulness because a springing POA only becomes effective under certain circumstances outlined by the customer.[66] SIFMA added that the proposed provision would create a situation where a person with the power to stand in the shoes of the incapacitated person, and perform many other aspects of his or her legal rights, would not be able to redirect mail away from an address at which the incapacitated person once resided. Two commenters indicated that an exception should also be made for legal executors of a decedent's estate or for a person with legal authority to act on behalf of a customer.[67] FAF expressed concern that the proposed provision does not create an exception for certain third parties, such as investment advisers, trust departments, custodians and pension plan trustees. FAF indicated that these entities need to receive customer accounts statements to perform their duties for the customer.

(II) Elderly, Disabled or Incapacitated Customers

Several commenters contended that mandating the delivery of account statements to a customer who is deemed incapacitated or impaired, living in a nursing facility or receives in-home care, or an elderly customer who has expressly designated another person or entity to receive the statements would increase the risk of unintended or

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66 See SIFMA and WFA.

67 See FSI and Wulff.

involuntary exposure of financially sensitive information to third parties.[68] Wulff noted that these persons would involuntarily have their financial affairs and personally identifiable information exposed to unvetted third parties. PIRC recommended that a customer be permitted to opt-out, in writing, of receiving account statements, particularly where the customer is disabled or incapacitated, or a customer resides in a nursing home facility. Two commenters stated that this class of investors should be able to decline delivery of their statements and instead have them delivered to an authorized third party.[69] Edward Jones recommended that FINRA consider an exemption to the general requirement where a firm has received written documentation from a medical professional verifying the disability or incapacity of the customer. Several commenters expressed the view that the preference of the customer, as to his or her own best interests, should govern.[70]

(III) Foreign and High Net Worth Customers

SIFMA raised similar concerns with respect to foreign or high net worth customers who would also be at risk of exposure of their financial information since in some foreign jurisdictions, mail delivery may not be secure, and a display of wealth may put such customers at risk of harm (e.g., kidnapping for ransom). SIFMA noted that high net worth customers do not want sensitive information contained within statements to be delivered to their homes because of unique challenges such as frequent travel or multiple homes and, as such, often delegate the handling and review of statements to a trusted

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68 See Edward Jones, FSI, NASAA, SIFMA, WFA, and Wulff.

69 See Edward Jones and FSI.

70 See FSI, PIRC, and Wulff.

agent or third party, who may not be a legal representative of the customer. While Rule 3150, incorporated under proposed Supplementary Material .04, cites safety or security concerns as examples of acceptable reasons for a customer's written instruction to "hold mail," SIFMA noted that the circumstances described above are not "hold mail" arrangements under Rule 3150. SIFMA indicated that arrangements to deliver statements to a third party for similar reasons should be permitted with written customer instruction.

4. Operational Concerns and Implementation of Proposed Supplementary Material .02

Two commenters requested prospective application of the provision.[71] Edward Jones stated that requiring remediation of existing accounts would impose significant costs and would not provide meaningful additional protection to investors. SIFMA emphasized the need for prospective application due to material operational challenges, which include persons who have become incapacitated since providing the original instruction to direct mail to a third party, as well as the significant costs associated with remediating hundreds of thousands of account relationships. The proposed rule change would apply prospectively, and FINRA intends to give member firms sufficient time to comply with the proposed rule change.[72]

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71 Edward Jones and SIFMA.

72 A member firm with a customer having a pre-existing arrangement to deliver account statements to a third party that was established before the effective date of proposed Rule 2231.02 would not be subject to the requirements of the proposed new rule solely with respect to such account until that pre-existing third party delivery arrangement is modified in any manner. Where any existing or new customer of the firm seeks to establish a third party delivery arrangement on or after the effective date of proposed Rule 2231.02, the firm would be subject to the terms of the new rule. Relatedly, in connection with its support for the

F. Proposed Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations)

Proposed Supplementary Material .03 would allow a firm to satisfy its account statement delivery obligations under Rule 2231 by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes. As stated above, this provision is consistent with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.[73]

SIFMA asserted that the cost burden associated with this new requirement would be particularly severe for members where customers have not elected to receive electronic account communications. GSU supported the use of electronic delivery of account statements only if the customer affirmatively elects that option on the basis that a customer who is not technologically savvy might not know how to electronically opt-out of an electronic statement policy, creating confusion as well as the possibility of a customer not being able to access his or her statements. The Center for Copyright Integrity urged that customer account statements should be delivered in paper form only on the belief that paper format will keep customers better informed on the contents of their files.

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proposed rule change to eliminate NYSE Rule Interpretation 409T(a)/03, SIFMA requested that FINRA confirm in a rule release commentary or an adopting Regulatory Notice that though the conditions in NYSE Rule Interpretation 409T(a)/03 would no longer apply, firms may continue to rely on this NYSE interpretation for preexisting agreements that use third party agents. The proposed rule change is not intended to impact preexisting agreements that use third party agents if they comport with applicable FINRA rules and guidance.

73 See supra note 19.

Proposed Supplementary Material .03 does not mandate the use of electronic media to deliver account statements, but permits a firm to do so subject to the standards established by the SEC. A firm may be able to evidence satisfaction of delivery obligations, for example, by obtaining the intended recipient's informed consent to deliver through a specified electronic medium and ensuring that the recipient has appropriate notice and access. SEC guidance describes "informed consent" as one that specifies the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, and describes the information that will be delivered using such means.[74] FINRA notes that proposed Supplementary Material .03 is not intended to impose any new delivery obligations beyond existing requirements.

G. Proposed Supplementary Material .05 (Information to be Disclosed on Statement)

Proposed Supplementary Material .05, derived largely from NYSE Rule Interpretation 409T(a)/02, including note 1, would specify the information that must be clearly and prominently disclosed on the front of a customer account statement, i.e., the identity of the introducing and carrying organizations, that the carrying organization is a member of SIPC, and the opening and closing account balances for the customer's account.

Two commenters expressed views on the appearance of SIPA disclosures on account statements.[75] GSU indicated its support for the requirement to provide the SIPA

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74 See supra note 19.

75 See GSU and PIRC.

disclosure on the front of an account statement because doing so would aid smaller investors to seek the help they might need in order to better understand their statements and monitor their accounts. PIRC recommended that FINRA provide guidelines with respect to how the SIPA disclosure should appear on an account statement, citing as an example, that FINRA should consider requiring firms clearly highlight the SIPA disclosure to prevent firms from "burying SIPA disclosures in the back of accounts statements or in the fine print, which customers may not be able to locate easily."

FINRA believes that proposed Supplementary Material .05 gives member firms adequate guidance and allows flexibility in providing this information while also ensuring that the SIPC status of the clearing firm is disclosed on the front of the statement.[76]

H. Use of Logos, Trademarks, etc. (Proposed Supplementary Material .07)

Proposed Supplementary Material. 07 incorporates, without substantive change, NYSE Rule Interpretation 409(a)/05, which governs the use of trademarks and logos of other persons on account statements by requiring that firms not use the logo, trademark or other similar identification of a person (other than the introducing firm or clearing firm) on a customer account statement in a manner that is misleading or causes customer confusion. SIFMA requested clarification as to what logos, trademarks, and other

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[76] Rule 2266 (SIPC Information) requires all member firms, unless they are excluded from SIPC membership and are not SIPC members, or whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such member firms also must provide SIPC's website address and telephone number, and provide all customers with the same information, in writing, at least once each year.

similar identification would be "misleading" to customers or cause "customer confusion." To the extent commenters have questions about the application of the proposed rule to particular facts and circumstances, FINRA will work with the industry to address interpretive issues as needed.

I. Other Comments

SIFMA requested confirmation that unless a customer requests otherwise, a firm may combine account statements for accounts of two or more customers sharing the same address in the same envelope addressed to one member of the household. In the SEC Householding Release, the SEC stated that it was adopting the "householding" rules because "the distribution of multiple copies of the same document to security holders who share the same address often inundates security holders with unwanted mail and causes the company to incur higher than necessary printing and mailing costs."[77] To avoid duplication, the SEC rule allows funds to deliver a single copy of the same document to investors who share the same address.[78] FINRA has not formally provided guidance on the issue of "householding" customer account statements and believes that the commenter raises an issue that is outside the scope of this proposed rule change. As

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77 See Securities Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) ("SEC Householding Release").

78 See Rule 154 (Delivery of prospectuses to investors at the same address) under the Securities Act of 1933. 17 CFR 230.154. See also SEA Rule 14a-3 (Information to be furnished to security holders). 17 CFR 240.14a-3. Rules 154 and 14a-3 permit the "householding" of prospectuses, annual reports, investment company semi-annual reports, and proxy statements or information statements to investors who share an address. Firms must obtain affirmative consent from investors or may rely on a finding of implied consent, subject to the conditions outlined in the Rule.

such, FINRA believes that the questions raised by SIFMA requires further discussion with the industry and investors to better understand the relevant facts and circumstances.

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.[79]

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

Not applicable.

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

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

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

Exhibit 2a. A copy of the Initial Rule Filing's Form 19b-4.

Exhibit 2b. A copy of the Amended Rule Filing's Form 19b-4.

Exhibit 2c. A copy of the Notice of Withdrawal of the Initial Rule Filing.

Exhibit 2d. Regulatory Notice 14-35 (September 2014).

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79 15 U.S.C. 78s(b)(2).

Exhibit 2e. List of Commenters to Regulatory Notice 14-35 (September 2014).

Exhibit 2f. Copy of Comment Letters to Regulatory Notice 14-35 (September 2014).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2021-024)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 2231 (Customer Account Statements)

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 , the Financial Industry Regulatory Authority, Inc. ("FINRA") 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: (1) amend Rule 2231 (Customer Account Statements) to (a) add new supplementary materials pertaining to compliance with Rule 4311 (Carrying Agreements), the transmission of customer account statements to other persons or entities, the use of electronic media to satisfy delivery obligations, and compliance with Rule 3150 (Holding of Customer Mail); and (b) incorporate without substantive change specified provisions derived from Temporary Dual FINRA-NYSE Rule Interpretation 409T (Statements of Accounts to Customers) pertaining to information disclosed on customer account statements, externally held assets, use of logos and trademarks, and use of summary statements; (2) delete Temporary Dual FINRA-NYSE

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

Rule 409T (Statements of Accounts to Customers) and Temporary Dual FINRA-NYSE Rule Interpretation 409T;[3] and (3) make other non-substantive and technical changes in Rule 2231 and to other FINRA rules due to this proposed rule change.

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

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

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3 As part of the process of completing a consolidated FINRA rulebook, FINRA adopted, without substantive changes, the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series. These NYSE rules and their corresponding interpretations now bear a "T" modifier after the rule and interpretation number to denote their placement in the Temporary Dual FINRA-NYSE Member Rules Series. The Temporary Dual FINRA-NYSE Member Rules Series 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. Among the remaining NASD rules was NASD Rule 2340 (Customer Account Statements), which was adopted, without substantive changes, as FINRA Rule 2231. Incorporated NYSE Rule 409 (Statements of Accounts to Customers) and Incorporated NYSE Rule Interpretation 409 (Statements of Accounts to Customers) were adopted, without substantive changes, under the Temporary Dual FINRA-NYSE Rules Series as Rule 409T and Interpretation 409T, respectively. See Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-009). For convenience, the rules and interpretations under the Temporary Dual FINRA-NYSE Member Rules Series are referred to as "NYSE Rule" and "NYSE Rule Interpretation," as appropriate.

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

Background

Rule 2231 and NYSE Rule 409T govern the obligation of members to deliver customer account statements to customers. Specifically, Rule 2231 and NYSE Rule 409T require each "general securities member"[4] and each member organization carrying customer accounts, respectively, to send account statements to customers at least quarterly showing security and money positions or account activity during the preceding quarter, except if carried on a Delivery versus Payment/Receive versus Payment ("DVP/RVP") basis.

At the time FINRA adopted Rule 2231, along with NYSE Rule 409T and NYSE Rule Interpretation 409T (together, "NYSE provisions"), among others, into the consolidated FINRA rulebook, FINRA noted that it would continue to review the substance of such rules and expected to propose substantive changes to some or all of the rules as part of future rulemakings.[5] As part of that effort and as described further below, FINRA is now proposing to amend Rule 2231 that would incorporate several existing

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4 Rule 2231(d) defines the term "general securities member" to mean "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). 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."

5 See supra note 3.

provisions from the NYSE provisions. As a result of this proposed harmonization, the NYSE provisions would be deleted in their entirety.

Rule 2231 differs from the NYSE provisions in several ways. First, Rule 2231(c) sets forth requirements for disclosure of values for unlisted or illiquid direct participation programs or real estate investment trust securities. Neither NYSE Rule 409T nor NYSE Rule Interpretation 409T have a corresponding provision. Second, the NYSE provisions address the delivery of confirmations, account statements or other communications to third parties subject to specified conditions and exceptions. In addition, NYSE Rule 409T(g) 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. Rule 2231 does not have similar provisions. Third, Rule 2231(d) expressly defines several terms (e.g., "account activity," "DVP/RVP account," "general securities member") and Rule 2231(e) provides for exemptive relief from the rule. NYSE Rule 409T expressly defines only one term, "DVP/RVP account," and does not provide for exemptive relief from the rule. Finally, unlike Rule 2231, NYSE Rule Interpretation 409T dictates the disclosures that must be made in a customer account statement, including for externally held assets, and requirements for use of third party agents, logos and trademarks, summary statements, and sets forth the standards for holding mail for a customer.

In light of these differences, FINRA is specifically proposing to: (a) add as new Supplementary Materials .01 (Compliance with Rule 4311 (Carrying Agreements)), .02 (Transmission of Customer Account Statements to Other Persons or Entities), .03 (Use of

Electronic Media to Satisfy Delivery Obligations), and .04 (Compliance with Rule 3150 (Holding of Customer Mail)); and (b) incorporate provisions derived from NYSE Rule Interpretation 409T, without substantive change, as Supplementary Materials .05 (Information to be Disclosed on Statement), .06 (Assets Externally Held), .07 (Use of Logos, Trademarks, etc.), and .08 (Use of Summary Statements).

Rule Filing History

In 2009, FINRA had filed with the SEC a proposed rule change to adopt then NASD Rule 2340 and legacy NYSE Rule 409, including its related interpretations, as Rule 2231 into the consolidated FINRA rulebook ("Initial Rule Filing") as part of the process of developing the consolidated FINRA rulebook.[6] Among other things, the Initial Rule Filing had set forth a number of proposed supplementary materials, most of which were derived largely from then NYSE Rule Interpretation 409 to address customer account disclosures, including for externally held assets, and requirements for use of third party agents, logos and trademarks, summary statements, and holding customer mail.[7]

Among these proposed supplementary materials was one, based in part on legacy NYSE Rule 409(b), which would have required written instructions from the customer to address or send customer statements, confirmations or other communications relating to the customer's account to other persons or entities. However, unlike legacy NYSE Rule

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6 See Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing of File No. SR-FINRA-2009-028).

7 FINRA had also proposed amending then NASD Rule 2340 to change the frequency of the delivery of account statements to a customer from quarterly to monthly where the customer had account activity during the preceding month, 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.

409(b), the proposed supplementary material was silent on whether a firm would have to continue sending account statements to the customer. Commenters to the Initial Rule Filing expressed concerns relating to the need for written customer consent to transmit customer account statements to third parties and sought clarification on whether firms would be required to obtain written consent when complying with then NASD Rule 3050 (Transactions for or by Associated Persons) and then NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange).[8] In response to these comments, among others, FINRA amended the Initial Rule Filing in 2011 ("Amended Rule Filing").[9] With respect to the transmission of customer account statements to third parties, FINRA had proposed clarifying that member firms would not be required to obtain prior written consent from their associated persons to send duplicate account statements or other communications with respect to such associated persons' accounts that were subject to then NASD Rule 3050 and NYSE Rule 407. To address concerns regarding potential fraud, especially with senior investors, where a third party receives

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8 NASD Rule 3050 and NYSE Rule 407 are the predecessor rules to Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions). In 2015, FINRA adopted Rule 3210 in the consolidated FINRA rulebook to replace NASD Rule 3050, NYSE Rules 407 and 407A (Disclosure of All Member Accounts) and the corresponding NYSE interpretations. See Securities Exchange Act Release No. 75655 (August 10, 2015), 80 FR 48941 (August 14, 2015) (Notice of Filing of File No. SR-FINRA-2015-029). Rule 3210 governs accounts that associated persons open or establish at firms other than their employer and in which they have a beneficial interest. In general, the rule requires that the associated person must obtain the prior written consent of his or her employer to open or establish the account, and provides that the member firm where the account is held must transmit duplicate copies of confirmations and statements to the employer upon the employer's request.

9 See Securities Exchange Act Release No. 64969 (July 26, 2011), 76 FR 46340 (August 2, 2011) (Notice of Filing of Amendment No. 1 to File No. SR-FINRA-2009-028).

the account statements in lieu of such customer, FINRA had also proposed clarifying that firms would have to continue to deliver account statements to customers, either in paper format or electronically, even when directed by the customer, in writing, to send statements to a third party. FINRA made this clarification in an effort to remain consistent with any SEC release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of transactions) that have established the policy that customers should continue to receive periodic account statements when not receiving immediate trade confirmations under SEA Rule 10b-10.[10] Further comments were received in response to the Amended Rule Filing. Commenters objected to the proposed requirement to deliver account statements to customers even when directed by customers, in writing, to send the statements to third parties. Some commenters believed that members should not be required to continue delivering account statements to customers, particularly where there was a power of attorney ("POA") or incapacity. FINRA withdrew the filing to further consider the comments.[11]

To address the concerns raised in the prior filing, FINRA published Regulatory Notice 14-35 (September 2014) ("Notice" or "Notice 14-35 Proposal"), seeking comment on a revised proposal to transfer then NASD Rule 2340 and Incorporated NYSE Rule 409 and its related interpretations, largely unchanged, into the consolidated FINRA rulebook as Rule 2231. With respect to the proposed supplementary material pertaining to the

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10 17 CFR 240.10b-10. See also note 9, supra.

11 See Securities Exchange Act Release No. 67588 (August 2, 2012), 77 FR 47470 (August 8, 2012) (Notice of Withdrawal of File No. SR-FINRA-2009-028).

transmission of customer account statements to other persons or entities, the Notice 14-35 Proposal set forth changes to that provision that aligned more closely with then NYSE Rule 409(b) and were intended to help ensure that a customer continues to receive the account statement even when such customer directs the firm to send the statement to a third party. As described further below, the proposed rule change differs in some respects from the terms set forth in the Notice 14-35 Proposal as to proposed Supplementary Material .02. In all other respects, subject to some technical changes, the proposed amendments to Rule 2231 remain substantively unchanged from the Notice 14-35 Proposal.

Proposed Amendments to Rule 2231

In 2019, after the publication of the Notice, FINRA adopted the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the remaining Incorporated NYSE Rules and Incorporated NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series.[12] No substantive changes to these rules were made in connection with the move into the consolidated FINRA rulebook. NASD Rule 2340 was renumbered as Rule 2231 and Incorporated NYSE Rule 409 and Incorporated NYSE Rule Interpretation 409 were renumbered as NYSE Rule 409T and NYSE Rule Interpretation 409T, respectively.

A. Paragraphs (a) through (e) Under Rule 2231 to Remain Substantively Unchanged

In general, paragraph (a) (General) under Rule 2231 addresses the frequency of the delivery of customer account statements, and the requirement for account statements

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12 See supra note 3.

to include a statement advising customers to report to the firm (introducing firm and clearing firm, if different) inaccuracies in their accounts in writing. Paragraph (b) (Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts) addresses account statement delivery requirements for DVP/RVP arrangements. Paragraph (c) (DPP and Unlisted REIT Securities) requires, among other things, general securities members to include in customer account statements a per share estimated value for a direct participation program ("DPP") or real estate investment trust ("REIT") security developed in a manner reasonably designed to ensure that the per share estimated value is reliable. In addition, paragraph (c) provides two methodologies for calculating the per share estimated value for a DPP or REIT security that is deemed to have been developed in a manner reasonably designed to ensure that it is reliable: the net investment methodology and the appraised value methodology. Paragraph (d) (Definitions) sets forth several definitions and finally, paragraph (e) (Exemptions) permits FINRA to exempt any member firm from the rule upon a showing of good cause. Consistent with the Notice 14-35 Proposal, FINRA is proposing to retain, without substantive changes, the existing requirements set forth in paragraphs (a) through (e) under Rule 2231.

B. Proposed Supplementary Materials to Rule 2231

In an effort to harmonize the NYSE provisions with Rule 2231, FINRA is proposing to add new supplementary materials relating to compliance with Rule 4311, the transmission of customer account statements to other persons or entities, the use of electronic media, and compliance with Rule 3150. In addition, the proposed change would transfer, with clarifying and technical changes, the existing requirements in NYSE

Rule Interpretation 409T relating to the information to be disclosed on statements,[13] assets externally held and included on statements solely as a service to customers,[14] the use of logos and trademarks, etc.,[15] and the use of summary statements.[16] As a result of this harmonization, some provisions would be new for FINRA members that are not also members of the NYSE (or "non-NYSE members") and for dual members. FINRA believes that harmonizing the NYSE provisions into Rule 2231 would provide greater clarity and regulatory efficiency to all FINRA member firms.

1. Compliance with Rule 4311 (Carrying Agreements) (Proposed Supplementary Material .01)

FINRA is proposing to add new Supplementary Material .01 to Rule 2231 that would remind firms of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2). Rule 4311 generally governs the requirements applicable to member firms when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. In general, Rule 4311(c) requires that each carrying agreement in which accounts are to be carried on a fully disclosed basis must specify the responsibilities of each party to the agreement, setting forth the minimum responsibilities that the agreement must allocate. Among those responsibilities, outlined in Rule 4311(c)(2), is to require each carrying agreement in which accounts are carried on a fully disclosed basis to expressly allocate to

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13 See NYSE Rule Interpretation 409T(a)/02 (Information to be Disclosed).

14 See NYSE Rule Interpretation 409T(a)/04 (Assets Externally Held and Included in Statements Solely as a Service to Customers).

15 See NYSE Rule Interpretation 409T(a)/05 (Use of Logos, Trademarks, etc.).

16 See NYSE Rule Interpretation 409T(a)/06 (Use of Summary Statements).

the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 (Customer protection – reserves and custody of securities.) and for preparing and transmitting statements of account to customers.[17] To emphasize the importance of ensuring the accuracy and integrity of customer account statements, proposed Supplementary Material .01 would remind firms of their obligations under Rule 4311, including paragraph (c)(2).

2. Transmission of Customer Account Statements to Other Persons or Entities (Proposed Supplementary Material .02)

Unlike NYSE Rule 409T, Rule 2231 does not address the transmission of customer account statements to third parties. To harmonize NYSE Rule 409T with Rule 2231, FINRA is proposing to add new Supplementary Material .02 to Rule 2231 to address the transmission of customer account statements to other persons or entities in similar fashion as NYSE Rule 409T. In general, NYSE Rule 409T(b) prohibits, without the NYSE's consent, the delivery of statements, confirmations or other communications to a nonmember customer: (1) in care of a person holding POA over the customer's account unless either (A) the customer has provided written instructions to the member organization to send such confirmations, statements or communications in care of such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by the customer; or (2) at the address of any member, member organization, or

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17 17 CFR 240.15c3-3. Rule 4311(c)(2) also provides that the carrying firm may authorize the introducing firm to prepare and/or transmit statements of account to customers on the carrying firm's behalf with the prior written approval of FINRA.

in care of a partner, stockholder who is actively engaged in the member corporation's business or employee of any member organization.[18]

In the Notice, FINRA had proposed that, except as required to comply with Rule 3210 (the successor rule to NASD Rule 3050 and NYSE Rule 407), a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding POA over the customer's account unless (1) the customer provided written instructions to the firm to send such statements or other communications to such person or entity or in care of a person holding POA over the customer's account; and (2) the firm sent duplicates of such statements or other communications, in accordance with Rule 2231, directly to the customer either in paper format or electronically as provided in proposed Supplementary Material .03. FINRA notes that unlike NYSE Rule 409T(b), which provides a firm the option (using the disjunctive "or") to continue delivering account statements to the customer that has an arrangement with the firm to deliver account statements to a third party, proposed Supplementary Material .02 as described in the Notice 14-35 Proposal did not. Omitting this option limited a customer's ability to decline receiving statements.

Commenters to the Notice 14-35 Proposal expressed concerns with this limitation, particularly where the customer's health or capacity was in question. In consideration of comments received to that proposal, FINRA is proposing to adjust the proposed supplementary material in several ways. The term "or other communications" would be

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18 NYSE Rule 409T(b) also provides that NYSE may, upon written request, waive the requirements therein. NYSE Rule 409T(b)(2) waivers are addressed in NYSE Rule Interpretation 409T(b)/01 (Standards for Holding Mail for Foreign Customers – Rule 409T(b)(2) Waivers), discussed below.

deleted from the proposed rule text to clarify that proposed Supplementary Material .02 would be confined to only customer account statements. The specific reference to "or in care of a person holding power of attorney over the customer's account" would also be deleted from the proposed rule text, leaving the general reference to "other persons or entities" that could include any third party the customer may designate to receive the account statements.

In addition, while proposed Supplementary Material .02 would retain the continuous statement delivery requirement to the customer as described in the Notice 14-35 Proposal, the proposed supplementary material would be adjusted to create a limited exception to the general requirement to continue to deliver account statements to a customer in cases where there is a court-appointed fiduciary. Specifically, proposed Supplementary Material .02(b) would provide that where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on behalf of a customer, a member may cease sending account statements to the customer upon written instructions from such court-appointed fiduciary provided that the court-appointed fiduciary furnishes to the member an official copy of the court appointment that establishes authority over the customer's account(s). As adjusted, proposed Supplementary Material .02(a) would state that, except as provided for in proposed paragraph (b) relating to the existence of a court-appointed fiduciary, a member may not send account statements relating to a customer's account(s) to other persons or entities unless: (1) the customer has provided written instructions to the member to send the statements to such person or entity; and (2) the member continues to send accounts statements directly to the customer either in paper format or

electronically as provided in Supplementary Material. 03 (Use of Electronic Media to Satisfy Delivery Obligations) of Rule 2231.

Finally, proposed Supplementary Material .02(c) would maintain, in similar fashion to the Notice 14-35 Proposal, that notwithstanding proposed Supplementary Material .02(a), a member may provide duplicate customer account statements under Rule 2070 (Transactions Involving FINRA Employees), Rule 3210, or other similar applicable federal securities laws, rules, and regulations in accordance with the requirements of such rule.[19]

FINRA believes that the proposed supplementary material, as adjusted herein, achieves the appropriate balance between ensuring that customers continue to receive their account statements in accordance with Rule 2231(a) to retain the ability to readily monitor their account activity while recognizing that there are special circumstances where a firm may stop the delivery of account statements to customers.

3. Use of Electronic Media to Satisfy Delivery Obligations (Proposed Supplementary Material .03)

FINRA is proposing to add new Supplementary Material .03 to Rule 2231 that would expressly allow a member 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.[20] This provision would be consistent

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19 See supra note 8.

20 SEC guidance to date on the use of electronic media generally requires the affirmative consent of the investor or customer. See Securities Act Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995); Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644 (May 15, 1996); and Securities Act Release No. 7856 (April 28, 2000); 65 FR 25843, 25854 (May 4, 2000).

with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.[21]

4. Compliance with Rule 3150 (Holding of Customer Mail) (Proposed Supplementary Material .04)

In general, Rule 3150 allows a firm to hold a customer's mail for a specific time period in accordance with the customer's written instructions if the firm meets specified conditions. FINRA is proposing to add new Supplementary Material .04 to Rule 2231 that would permit member firms to hold customer mail, including customer account statements, subject to the requirements of Rule 3150.

5. Information to be Disclosed on Statement (Proposed Supplementary Material .05)

NYSE Rule Interpretation 409T(a)/02 describes the information that must be disclosed on the front of a customer account statement: the identity of the introducing and carrying organizations, and their respective phone numbers for service; that the carrying organization is a member of Securities Investor Protection Corporation ("SIPC"); and the opening and closing account balances. Note 1 to NYSE Rule Interpretation 409T(a)/02 provides that "[t]he SEC has stated that under the SEA 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

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[21] See Notice to Members 98-3 (January 1998) (stating in part that members are permitted to electronically transmit documents that they are required or permitted to furnish to customers under FINRA rules, provided they comply with all aspects of the SEC's electronic delivery requirements).

back of the statement. If it does, it must be in 'bold' or 'highlighted' letters." Unlike NYSE Rule Interpretation 409T(a)/02, Rule 2231 does not detail the information that must be clearly and prominently disclosed on the front of an account statement. FINRA is proposing to transfer NYSE Rule Interpretation 409T(a)/02, inclusive of note 1, without substantive changes, as Supplementary Material .05 to Rule 2231. Proposed Supplementary Material .05 to Rule 2231 would specify the following information to be clearly and prominently disclosed on the front of the account statement: (1) the identity of the introducing and clearing firm, if different, and their respective contact information for customer service, permitting the identity of the clearing firm and its contact information to appear on the back of the statement provided such information is in "bold" or "highlighted" letters; (2) that the clearing firm is a member of SIPC; and (3) the opening and closing balances for the account.

6. Assets Externally Held (Proposed Supplementary Material .06)

NYSE Rule Interpretation 409T(a)/04 provides that where the account statement includes assets for which a 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 separated on the statement. In addition, the statement must indicate that such externally held assets are included on the statement solely as a service to the customer and are not covered by SIPC, and that information is derived from the customer or other external source for which the member organization is not responsible.[22] Rule 2231 does not contain a similar provision.

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[22] See NYSE Information Memo 97-56 (December 1997) (stating, "[t]his provision is not intended to cover assets (e.g., stocks or mutual funds) to which the member organization has access that may be held at a depository or mutual fund.").

FINRA is proposing to transfer the requirements of NYSE Rule Interpretation 409T(a)/04, without substantive changes, as proposed Supplementary Material .06 to Rule 2231. Under proposed Supplementary Material .06, where the account statement includes assets that the member firm does not carry on behalf of a customer and that are not included on the member firm's books and records, such assets must be clearly and distinguishably separated on the statement. In addition, in such cases, the statement must: (1) clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer; (2) disclose that information, including valuation, for such externally held assets is derived from the customer or other external source for which the member firm is not responsible; and (3) identify that such externally held assets may not be covered by SIPC.

7. Use of Logos, Trademarks, Etc. (Proposed Supplementary Material .07)

NYSE Rule Interpretation 409T(a)/05 provides that where the logo, trademark or other identification of a person (other than the introducing firm or clearing firm) appears on an account statement, then the identity of such person and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be misleading or confusing to customers. Rule 2231 does not contain a similar provision. FINRA is proposing to transfer, without substantive change, NYSE Rule Interpretation 409T(a)/05 as proposed Supplementary Material .07. FINRA notes that proposed Supplementary Material .07 would be consistent with the general requirements of Rule 2210 (Communications with the Public).

8. Use of Summary Statements (Proposed Supplementary Material .08)

NYSE Rule Interpretation 409T(a)/06 addresses the responsibilities associated with the practice of firms, with other related financial institutions, to jointly formulate and distribute to their common customers their respective customer account statements, together with "summary statements."[23] In general, a summary statement reflects information from entities that is part of a financial services "group" or "family" or where a firm carries accounts for another broker-dealer that is part of such group or family. A summary statement provides an overview of the customer's accounts at the separate entities and is supported by and derived from the detail on the separate underlying respective account statements. NYSE Rule Interpretation 409T(a)/06 sets forth several requirements for the use of summary statements that include: (1) an indication that such summary statement is provided for informational purposes and includes assets held at different entities; (2) the summary statement identifies each entity from which information is provided or assets are being held are included, their relationship to each other, and their respective functions (e.g., introducing or carrying brokerage firms, fund distributor, banking or insurance product providers, etc.); (3) relative to services provided for assets included on the summary, the summary statement must clearly distinguish between assets held by each entity, identify the customer's account numbers at each entity, and provide a customer service telephone number at each entity (if the account number and customer service numbers are not included on the underlying statements); and (4) identify each entity that is a member of SIPC. These requirements help ensure

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[23] See generally NYSE Information Memo 97-56 (December 1997).

that customer account statements clearly identify the respective entities involved and distinguish brokerage assets from non-brokerage assets.[24] Rule 2231 does not have a counterpart provision.[25] In the Notice, FINRA had proposed transferring the requirements of NYSE Rule Interpretation 409T(a)/06, without substantive changes, as proposed Supplementary Material .08 to Rule 2231.

FINRA is proposing to retain this approach, but with some clarifying revisions to proposed Supplementary Material .08 to expressly state that the summary statement is for a customer's convenience and includes assets that may not be held by the broker-dealer, and does not replace any other statement the customer may receive from other financial

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24 NYSE Rule Interpretation 409T(a)/06 also provides that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation must be recognizable as having been arithmetically derived from the separately stated totals or their components. In addition, the summary statement, and the beginning and end of each underlying account statement, must be clearly distinguishable from each other by using some distinct form of demarcation (e.g., color, pagination or columns). Further, there must be a written agreement between the parties that are jointly distributing the combined statements with the summary, that each entity has developed procedures and controls for testing the accuracy of its own information included on the customer statement. Finally, NYSE Rule Interpretation 409T(a)/06 requires that summary statements must comply with NYSE Rule 409T and all interpretations thereof.

25 While Rule 2231 does not have a counterpart provision to NYSE Rule Interpretation 409T(a)/06, FINRA has issued guidance reminding firms of their responsibilities when providing customers with consolidated financial account reports or "consolidated reports," which offer a broad view of customers' investments, may include assets held away from the firm, and may provide not only account balances and valuations, but performance data as well. In that guidance, FINRA noted that these types of communications "may supplement, but do not replace, the customer account statement required pursuant to [Rule 2231] and [NYSE Rule 409T], which is prepared and disseminated to the customer through a separate process. Consolidated reports may not be represented as a substitute for, and must be distinguished from, account statements that are required by rule." See Regulatory Notice 10-19 (April 2010).

institutions that may hold the customer's assets. Under proposed Supplementary Material .08, as revised, if a multi-entity summary statement is sent to customers, it must: (1) indicate that the summary statement is provided for the customer's convenience and includes assets that may not be held by the broker-dealer; (2) indicate that the summary statement does not replace any other statement(s) the customer may receive from other financial institutions that hold the customer's assets; (3) identify each entity from which information is provided or assets being held are included, their relationship to each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing firm, carrying firm, fund distributor, banking or insurance product provider, etc.); (4) clearly distinguish between assets held or categories of assets held by each entity included in the summary; (5) identify the customer's account number at each entity and provide a customer service contact information at each entity (if the account number and customer service information at each entity are included on their respective account statements, then such information need not be included on the summary statement); and (6) identify each entity that is a member of SIPC. Proposed Supplementary Material .08 would also require a member firm to ensure that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation is recognizable as having been arithmetically derived from the separately stated totals or their components. In addition, proposed Supplementary Material .08 would require that a member firm also must distinguish the beginning and end of each separate statement by a distinct form of demarcation. Finally, the proposed supplementary material would require a member firm to ensure that there is a written agreement between the parties jointly formulating or distributing the combined

statements with the summary attesting that each entity has developed procedures and controls for testing the accuracy of its own information included on the statements, and that the summary statement complies with Rule 2231.

C. NYSE Provisions to be Eliminated and Not Harmonized with Rule 2231

FINRA is proposing to delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions have been included in Rule 2231, are duplicative of other rules, or are outdated. The following describes concepts found in the NYSE provisions that would not be incorporated into Rule 2231.

1. NYSE Rule 409T Provisions

a. Confirmations or Other Communications (NYSE Rule 409T(b))

As described above, the proposed rule change would confine proposed Supplementary Material .02 to customer account statements to lend clarity to the scope of the provision. FINRA notes that the delivery requirements of confirmations are governed by SEA Rule 10b-10 (Confirmation of transactions) and FINRA Rule 2232 (Customer Confirmations).

b. Person Holding Power of Attorney (or Attorney-in-Fact) (NYSE Rule 409T(b) and Paragraphs (1) through (6) Under NYSE Rule 409T.10 (Exceptions to Rule 409T(b))

In addition to eliminating NYSE Rule 409T(b), the proposed rule change would eliminate NYSE Rule 409T.10(1) through (6), which provides exceptions to the requirements of NYSE Rule 409T(b) for certain identified persons or entities, such as

persons having powers of attorney.[26] As described above, FINRA is proposing to adopt proposed Supplementary Material .02 relating to the transmission of customer account statements to other persons or entities, which would provide an exception for court-appointed fiduciaries.

c. Legend on Account Statements Pertaining to Firm's Financial Statements (NYSE Rule 409T(e)(1))

In general, NYSE Rule 409T(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. The proposed rule change would eliminate this requirement in light of existing requirements under paragraph (c) (Customer Statements) of SEA Rule 17a-5 (Reports to be Made by Certain Brokers and Dealers),[27] which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and FINRA Rule 2261 (Disclosure of Financial Condition), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon request.

d. Duplicate Copies of Monthly Statements to Guarantors (NYSE Rule 409T(g))

NYSE Rule 409T(g) provides that member firms carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to

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26 See NYSE Rule 409T.10(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."

27 17 CFR 240.17a-5.

the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them. The proposed rule change would eliminate NYSE Rule 409T(g) because this provision, which provides that members should send duplicate account statements to guarantors, would be addressed by the general requirement in proposed Supplementary Material .02 to obtain written instructions from the customer to send account statements to a third party.

e. Holding Customer Mail (NYSE Rule 409T.10(7))

As noted above, the proposed rule change would eliminate the concept of holding customer mail set forth in paragraph (7) under NYSE Rule 409T.10, as a member's obligations with respect to this activity are addressed in Rule 3150, and proposed Supplementary Material .04 would expressly permit a member to hold customer mail consistent with Rule 3150.

2. NYSE Rule Interpretation 409T

a. Use of Third Party Agents (NYSE Rule Interpretation 409T(a)/03)

In general, NYSE Rule Interpretation 409T(a)/03 requires a written representation or undertaking from the member organization to the NYSE, representing that certain conditions are satisfied when using third party agents (e.g., service bureaus or other independent entities) to prepare and transmit customer account statements.[28] The

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[28] Under NYSE Rule Interpretation 409T(a)/03, a member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with NYSE Rule 409T(a), and that the member organization has developed procedures and controls for reviewing and testing the accuracy of statements, and will retain copies of all such statements in accordance with applicable books and records requirements. In addition, NYSE Rule Interpretation 409T(a)/03 addresses the allocation of responsibilities for preparation and transmissions of statements under a carrying agreement and provides that an introducing organization that is a provider of

proposed rule change would eliminate NYSE Rule Interpretation 409T(a)/03 because such arrangements are addressed under Rule 4311 and other relevant guidance.[29]

b. Standards for Holding Mail for Foreign Customers – Rule 409T(b)(2) Waivers (NYSE Rule Interpretation 409T(b)/01)

The proposed rule change would eliminate NYSE Rule Interpretation 409T(b)/01, which provides guidelines for holding confirmations, statements, and broker-dealer financial statements for foreign customers. A member's obligations with respect to holding customer mail are addressed in Rule 3150, which is referenced in proposed Supplementary Material .04.

D. Technical Changes to Other FINRA Rules

The proposed harmonization of the NYSE provisions with Rule 2231 would require technical amendments to Interpretative Material ("IM")-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) and IM-1013-2 (Membership Waive-In Process for Certain NYSE American LLC Member Organizations), which describe a waive-in membership application process for some member organizations of the NYSE and NYSE American LLC. In general, subject to specified terms set forth in these interpretative materials, a firm admitted to FINRA membership through either of these provisions (i.e., "waived-in firm") is not subject to the remaining FINRA rules that have yet to be harmonized with their corresponding

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services included in a member organization's statements of accounts may not function as a third party agent and may not itself prepare or transmit such statements.

29 See Notice to Members 05-48 (July 2005) (describing a member's responsibilities when outsourcing activities to third party service providers).

NYSE rules or interpretations under the Temporary Dual FINRA-NYSE Member Rule Series. Currently, these rules are Rule 2231 and the NYSE provisions. FINRA is proposing to amend IM-1013-1 and IM-1013-2 to remove the reference to Rule 2231 as all waived-in firms will become subject to Rule 2231, as amended herein.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a Regulatory Notice. The effective date will be no later than 365 days following publication of the Regulatory Notice announcing Commission approval of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[30] 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 further the purposes of the Act because the proposed rule change will help protect investors and the public interest by largely retaining the existing requirements under Rule 2231 that promotes effective regulation of account statements. FINRA believes that by proposing several new supplementary materials that provide clarity in areas such as compliance with other FINRA rules, the use of electronic delivery, transmission of account statements to other persons or entities, information to be disclosed on statements, assets externally held, the use of logos and trademarks, and the use of summary statements, the proposed rule

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30 15 U.S.C. 78o–3(b)(6).

change will establish consistent industry standards pertaining to the substance and the presentation of customer account statements.

In addition, FINRA believes proposed Supplementary Material .02, as revised in light of comments received in response to the Notice, strikes an appropriate balance to protect investors by ensuring that customers continue to receive their account statements while reducing the proposed rule change's impact on member firms. As discussed previously, these revisions include: (1) confining the scope only to customer account statements; (2) adding a limited exception from the general requirement to continue providing account statements to customers who have authorized third party delivery by permitting member firms to cease sending such statements to customers upon written instructions from a court-appointed fiduciary acting on behalf of the customer; and (3) clarifying that, notwithstanding the general requirement to obtain written instructions from a customer to establish third party delivery of account statements, firms may provide duplicate customer account statements under Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rules.

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.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change and its potential economic

impacts, including anticipated costs and benefits, and the alternatives FINRA considered in assessing how to meet its regulatory objectives.

1. Regulatory Need

Rule 2231 and the NYSE provisions have remained substantively unchanged since their adoption into the consolidated FINRA rulebook. Having two sets of rules with differing application or scope may prevent firms from consistently applying the rules and thus create uncertainties in compliance and lead to unnecessary costs. In an effort to harmonize these rules, FINRA is proposing to amend Rule 2231 to incorporate guidance and several provisions that exist under the NYSE provisions and in other FINRA rules as supplementary materials. Notably, FINRA is proposing to adopt new Supplementary Material .02, derived in large part from NYSE Rule 409T(b), but with some adjustments from the terms set forth in the Notice that would address a situation in which a customer may want to transmit account statements to other persons or entities, and stop receiving statements due to particular circumstances. As a result of the proposed harmonization, FINRA is proposing to eliminate the NYSE provisions in their entirety as they are, to some degree, duplicative of Rule 2231 or would become obsolete by the proposed rule change.

2. Economic Baseline

The current provisions governing customer account statements under Rule 2231 and the NYSE provisions, and other related rules and current industry practices serve as an economic baseline for the proposed rule change. While all FINRA members are subject to Rule 2231, dual members are also subject to several additional requirements existing only in the NYSE provisions. As of December 31, 2020, there are 3,435 FINRA members, of which 134 are dual members.

3. Economic Impacts

The substantive changes to Rule 2231 described in this proposed rule change relate to the supplementary materials, most of which are derived from the NYSE provisions and for that reason, the economic impacts herein focus primarily on the proposed supplementary materials, particularly proposed Supplementary Material .02.

Proposed Supplementary Material .02

In general, proposed Supplementary Material .02 addresses a situation where a customer instructs the firm, in writing, to send his or her account statements to another person or entity and limits the customer's ability to stop receiving them, except where there is a court-appointed fiduciary.[31] One issue some commenters raised was the requirement for firms to continue delivering account statements to the customer even where the customer directs the firm, in writing, to send the customer's account statements to a third party, and does not wish to continue receiving them due to health concerns, among other reasons. For example, SIFMA expressed the belief that the requirement to continue delivering account statements to the customer may result in the fraud that will likely arise from identity theft where account statements are sent to a customer against his or her request or against the request of a person with the legal authority to act on behalf of the customer. SIFMA added that proposed Supplementary Material .02 may have a material negative impact on the client experience and serve to drive clients to advocacy models without this requirement.

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[31] Proposed Supplementary Material .02 also provides that members are not required to obtain prior written consent to send customer account statements in compliance with Rule 2070, Rule 3210, or other similar applicable federal securities laws, rules, and regulations in accordance with the requirements of such rule.

FINRA believes that the customer's ability to stop receiving his or her own account statements when there is a court-appointed fiduciary strikes the appropriate balance between the investor protection functions of Rule 2231 to ensure that the customer is able to monitor and verify the transactions occurring in the customer's account and the concerns raised by some commenters about ceasing the delivery of account statements to a customer under compelling circumstances. FINRA recognizes that some customers may incur supplemental costs to conform to the continuous delivery requirement in proposed Supplementary Material .02. Customers who do not wish to receive their account statements may bear some burden in controlling and destroying them. Alternatively, customers may incur costs associated with seeking the exception through a court-appointed fiduciary. Customers may incur the direct cost of seeking a court-appointed fiduciary as well as the indirect cost of giving away other rights not associated with account statements when a fiduciary is appointed by the court. To alleviate the potential compliance costs associated with continuous statement delivery to customers and the concern over possible identity theft and fraud, members could encourage, if appropriate, their customers to choose to receive their statements electronically in a manner consistent with proposed Supplementary Material .03, a further discussion of which follows below.

In addition, firms may also incur costs to conform to proposed Supplementary Material .02 including the tracking and retention of each customer's written instructions and official documents related to the court appointment of a fiduciary, and where statements are delivered in paper format, the costs of additional postage, printing, and

other attendant expenses.[32] However, FINRA understands that in practice, some firms already provide continuous account statement delivery to their customers even with third party delivery arrangements in place except in special circumstances (e.g., validated medical excuse), and that concerns related third party delivery arrangements rarely arise.

Other Proposed Supplementary Materials

Proposed Supplementary Materials .01, .03, and .04, respectively, would remind firms of existing requirements under Rule 4311, SEC guidance on using electronic media to satisfy delivery obligations, and Rule 3150. The NYSE provisions that FINRA is proposing to incorporate into Rule 2231 as Supplementary Materials .05, .06, .07, and .08 would address, respectively, the information to be disclosed on statements, externally held assets, the use of logos and trademarks, etc., and the use of summary statements. FINRA does not expect these proposed harmonizing amendments to Rule 2231 to impose material burdens on member firms as these proposed supplementary materials are substantially similar to existing rules or otherwise consistent with current guidance.

4. Alternatives Considered

FINRA considered various suggestions in developing the proposed rule change. The proposed rule change reflects the changes that FINRA believes at this time to be the most appropriate for the reasons discussed herein.

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[32] In the Notice, FINRA asked specific questions concerning, among other things, the direct and indirect costs that may result from proposed Supplementary Material .02. See generally Notice, Section C (Request for Comment). SIFMA commented that a firm with approximately 7.4 million accounts provided a cost estimate of over 14 million dollars just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02, excluding substantial staffing and technology costs.

a. Frequency of Delivery of Account Statements to Customer

In the Initial Rule Filing and Amended Rule Filing, FINRA had considered amending then NASD Rule 2340 to change the frequency of the delivery of account statements to customers from quarterly to monthly. The comments FINRA received in response to these prior filings suggested that such a proposed change would result in significant compliance costs for the industry without commensurate benefits for customers, and could create conflicts with some securities laws and regulations, among other things. Based on these comments, FINRA has determined to retain the quarterly delivery requirement for customer accounts statements currently set forth in Rule 2231(a).[33]

b. Definition of "General Securities Member"

Currently, under Rule 2231(d)(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 SEA 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."[34] In the Notice, FINRA specifically requested comment on potential clarifications to the definition of "general securities member."[35] At this time, FINRA is not proposing to amend Rule 2231(d)(2).

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33 The account delivery frequency aligns with NYSE Rule 409T(a).

34 The NYSE provisions do not have a corresponding definition.

35 FINRA did not receive comments in this area, but FAF noted that registered investment advisors ("RIAs") do not fall under the definition.

c. Exception from the General Requirement to Send Account Statements to Customers

Proposed Supplementary Material .02 as presented in the Notice did not contemplate an exception from the firm's general requirement to continue sending account statements to customers. In the Notice, FINRA specifically requested comment on whether the proposal should include specific exclusions that would allow members not to send account statements to customers under identified situations. FINRA also specifically sought comment on current industry practices, safeguards, or best practices with respect to sending account statements to a customer who is disabled or incapacitated, resides in a nursing home, has a trusted person to review statements, or where there is a valid POA or guardianship established.

In consideration of the comments to the Notice, FINRA has modified proposed Supplementary Material .02 from the terms outlined in the Notice. In addition to limiting the scope of the proposed supplementary material to only customer account statements and omitting the specific reference to POA, the proposed provision would create a limited exception from the general requirement for firms to continue to deliver account statements to a customer in cases where there is a court-appointed fiduciary acting on behalf of the customer. The other aspects of the proposed supplementary material would remain substantively unchanged from the terms set forth in the Notice, including the option to send account statements to the customer either in paper format or electronically as provided in proposed Supplementary Material. 03.

FINRA notes that members could request customers that provide written instructions to the member to send account statements to other persons or entities to authorize the member to satisfy the requirement to continue delivering statements to the

customer through electronic delivery consistent with proposed Supplementary Material .03. In this manner, FINRA believes that member firms could both mitigate the concerns relating to the costs of postage, printing and mailing account statements, and address concerns relating to possible identity theft and fraud in circumstances where account statements are sent. With respect to the general requirement for firms to continue to deliver account statements to the customer even when the customer has directed the firm, in writing, to send account statements to other persons or entities, FINRA understands that even where there is a third party delivery arrangement in place, in general, firms continue to send account statements to their customers except under extenuating circumstances (e.g., validated medical excuse). This industry practice accords with Rule 2231(a), which reflects the core principle that customers should be fully informed of the status of their accounts.

FINRA believes that proposed Supplementary Material .02, as modified, lends the appropriate balance between ensuring that customers continue to receive their account statements in accordance with Rule 2231(a) to ensure that they have the ability to monitor their account activity while recognizing that there may be special circumstances where a firm may stop the delivery of account statements to customers.

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

The proposed rule change was published for comment in the Notice 14-35 Proposal. FINRA received 14 comment letters in response to the Notice 14-35 Proposal. A copy of the Notice 14-35 Proposal is available on FINRA's website at http://www.finra.org. A list of the comment letters received in response to the Notice 14-35 Proposal is available on FINRA's

website.[36] Copies of the comment letters received in response to the Notice 14-35 Proposal are also available on FINRA's website.

Several commenters expressed general support for the purpose and intent of the Notice 14-35 Proposal.[37] In addition, several commenters noted that the proposed rule change includes meaningful changes in response to comments on the Initial Rule Filing.[38] However, as discussed below, commenters to the Notice 14-35 Proposal objected to limiting a customer's ability to decline receiving statements, particularly where the customer's health or capacity was in question. In addition, the commenters raised concerns regarding existing customer account relationships with third party delivery arrangements in place. FINRA considered the commenters' concerns, including the attendant operational aspects of sending account statements to customers and third parties. The comments and FINRA's responses are set forth below.

1. General (Rule 2231(a))

A. Quarterly Customer Account Statement Delivery Requirement

Currently, Rule 2231(a) generally requires a 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, except if carried on a DVP/RVP basis.

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36 See SR-FINRA-2021-024 (Form 19b-4, Exhibit 2e) for a list of abbreviations assigned to commenters (available on FINRA's website at http://www.finra.org).

37 See GSU, PIRC, SIFMA, WFA, and Wulff.

38 See Edward Jones, FSI, PIRC, SIFMA, WFA, and Wulff.

NYSE Rule 409T(a) similarly establishes a quarterly account statement delivery requirement.

Several commenters expressed support for retaining the delivery frequency in the current rule, noting that the quarterly delivery requirement is consistent with industry practices.[39] NASAA, however, urged FINRA to revert to the monthly delivery frequency as originally proposed in the prior rule filings, stating that monthly delivery would allow customers to better monitor their accounts and identify any potential unauthorized fraudulent activity. PIRC recommended that customers should have the option of receiving quarterly or monthly statements based on their own individual needs, and also recommended that customers be provided with the option to receive account statements electronically and to make available to customers a status of their accounts via telephone or online at the customer's request.

FINRA notes that nothing in the rule, in its current form, precludes a firm from sending account statements to a customer on a more frequent schedule in a particular medium to meet the needs of the customer. Consistent with the Notice 14-35 Proposal, FINRA is proposing to retain the existing requirement in Rule 2231(a) for members to send customer account statements at least once each quarter.

B. Securities Investor Protection Act ("SIPA") Disclosure Requirement

Rule 2231(a) requires a general securities member to include in the account statement a statement advising a customer to report promptly any inaccuracy or discrepancy in that person's account to the member firm, and that any oral

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39 See Edward Jones, FSI, SIFMA, and WFA.

communication to the member firm should be reconfirmed in writing to further protect the customer's rights, including rights under SIPA. NYSE Rule 409T(e)(2) similarly requires a member organization to include a legend in the account statement with the same advice.

PIRC expressed concerns with the SIPA disclosure requirement in Rule 2231(a). PIRC stated that it has encountered firms that have used the disclosure as a defense to claims in arbitration, suggesting that the disclosure only appears to be intended to protect investors. PIRC recommended that FINRA amend this portion of the rule to ensure that such disclosure cannot be used against a customer in a dispute.

In 2001, the then U.S. General Accounting Office, now known as the Government Accountability Office ("GAO"), issued a report in which it made recommendations to the SEC and SIPC about ways to improve the information available to the public about SIPC and SIPA.[40] Among other things, the GAO recommended that self-regulatory organizations, such as FINRA, consider requiring firms to include information on periodic statements or trade confirmations to advise investors that they should document account discrepancies in writing. In response to that recommendation, Rule 2231(a) was amended in 2006 to require that account statements include a statement advising each customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm and clearing firm (where these are different firms), and such statement also must advise the customer that any oral communication should be re-confirmed in writing to further protect the customer's rights, including rights under

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40 See Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors, GAO-01-653 (May 25, 2001), https://www.gao.gov/products/gao-01-653.

SIPA.[41] Written documentation is important because in the event a firm goes into SIPC liquidation, SIPC and the trustee generally will assume that the firm's records are accurate unless the customer is able to prove otherwise.[42] As FINRA noted in the 2006 rule filing to amend Rule 2231(a), the disclosure requirement does not impose any limitation whatsoever on a customer's right to raise concerns regarding inaccuracies or discrepancies in his or her account at any time, either in writing or orally.[43] Further, a customer's failure to promptly raise such concerns, either in writing or orally, does not preclude a customer from reporting an inaccuracy or discrepancy in his or her account during any SIPC liquidation of his or her brokerage or clearing firm.[44] FINRA believes

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41 See Securities Exchange Act Release No. 54411 (September 7, 2006), 71 FR 54105 (September 13, 2006) (Order Approving File No. SR-NASD-2004-171), as corrected by Securities Exchange Act Release No. 54411A (October 6, 2006), 71 FR 61115 (October 17, 2006). See also Notice to Members 06-72 (December 2006).

42 See supra note 41. SIPC advises investors who discover an error in a confirmation or statement to immediately bring the error to the attention of their brokerage firm in writing and to keep a copy of any such writing. See SIPC, How SIPC Protects You: Understanding the Securities Investor Protection Corporation (2015), https://www.sipc.org/media/brochures/HowSIPCProtectsYou-English-Web.pdf. More recently, FINRA, NASAA, and SIPC jointly issued an investor alert discussing the importance of regularly reviewing brokerage account statements, and the steps a customer should take to document concerns with an error on a brokerage statement or trade confirmation. See FINRA Investor Alert, It Pays to Pay Attention to Your Brokerage Account Statements (December 18, 2019), https://www.finra.org/investors/alerts/pay-attention-brokerage-account-statements. See also NASAA Investor Advisory, It Pays to Pay Attention to Your Brokerage Account Statements" (December 2019), https://www.nasaa.org/53392/53392/?qoid=investor-advisories and SIPC News Release, It Pays to Pay Attention to Your Brokerage Account Statements, https://www.sipc.org/news-and-media/news-releases/20191218).

43 See supra note 42.

44 See supra note 42.

that the provision continues to enhance customer protection in accordance with GAO's recommendation and has determined to maintain Rule 2231(a) pertaining to SIPA disclosure in its current form.

2. DVP/RVP Accounts (Rule 2231(b))

Currently, Rule 2231(b) and NYSE Rule 409T(a) provide that quarterly account statements do not need to be sent to a customer if the customer's account is carried solely for execution on a DVP/RVP basis, subject to specified conditions.[45]

Auerbach recommended that Rule 2231 provide an exemption from the requirement to issue periodic account statements in the case of DVP/RVP customers of a member firm that use a third party custodian selected by the customer that is required to issue periodic account statements to the customer. Auerbach stated that in such cases, periodically issued brokerage firm account statements are duplicative, unnecessary and increase costs for the broker, the customer, and the third party custodian, and such accounts statements will compel the customer and its custodian to reconcile their records with the statement from the broker and require all three parties to expend additional time, energy, and cost on a matter that is already handled through the normal clearance and settlement process. SIFMA requested confirmation that members may treat an institutional customer trading pursuant to discretionary authority in the DVP/RVP account or the authorized person or institution that opened the account as the "customer" for these purposes and collect and maintain the consents from such institutions, instead of the underlying customers.

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[45] These rules do not qualify or condition the obligations of members under SEA Rule 15c3-3(j)(1) concerning quarterly notices of free credit balances on statements.

FINRA believes that the issues raised by the commenters are better addressed through FINRA's interpretative guidance process so that FINRA has the opportunity to fully consider the relevant facts and circumstances. In addition, FINRA emphasizes that the rule in its current form allows a DVP/RVP customer to affirmatively elect not to receive account statements. By requiring the customer's affirmative consent, the customer's ability to receive quarterly statements is preserved, and the member is precluded from unilaterally terminating delivery of customer statements. Moreover, the customer is able to promptly receive particular account statements upon request, and promptly reinstate the delivery of account statements upon request.[46]

3. Definitions (Rule 2231(d))

Rule 2231(d)(2) provides that 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 SEA 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 [Rule 2231]." FAF noted that RIAs need to have access to customer information in order to perform their duties to their customers or clients. FAF expressed concern that RIAs are not covered by the definition of "general securities member" in Rule 2231(d) and consequently, RIAs would not be entitled to receive customer or client information.

The term "general securities member" identifies which FINRA member firms are required to deliver account statements, not which firms are entitled to receive such statements. Moreover, FINRA notes that nothing in proposed Supplementary Material

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[46] See Notice to Members 06-68 (November 2006).

.02 would preclude a customer from providing written consent to his or her member firm to send account statements to an RIA, subject to the conditions set forth in the proposed rule.[47]

4. Compliance with Rule 4311 (Carrying Agreements) (Proposed Supplementary Material .01)

Proposed Supplementary Material .01 to Rule 2231 would remind firms that Rule 4311(c)(2) generally requires each carrying agreement, in which accounts are carried on a fully disclosed basis, to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.[48] Rule 4311(c)(2) provides that the carrying firm may authorize the introducing firm to prepare and transmit such statements on the carrying firm's behalf with the prior written approval of FINRA.

SIFMA requested clarification from FINRA regarding the obligation to obtain written authorization from a customer regarding the mailing of statements to a third party, and the ability of a clearing firm to rely on introducing brokers in asserting the authenticity of a written approval. SIFMA stated that introducing firms are in the best position to know the customer and, as long recognized through contract and in practice, and as permitted under Rule 4311, introducing firms are typically allocated the responsibility for opening accounts as well as maintaining and updating customer addresses, which ultimately drives the delivery of account statements.

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47 RIAs also should consider their obligations under the Investment Advisors Act of 1940, including Rule 206(4)-2 (Custody of Funds or Securities of Clients by Investment Advisors).

48 See Regulatory Notice 11-26 (May 2011).

FINRA agrees that consistent with guidance on the allocation of responsibilities between carrying firms and introducing firms and as permitted under Rule 4311, clearing firms may reasonably rely on introducing firms with respect to updating and keeping track of required consents and addresses for third parties that may receive account statements under this rule. However, both carrying firms and introducing firms must have policies and procedures in place to ensure that their respective responsibilities are met.[49]

5. Transmission of Customer Account Statements to Other Persons or Entities (Proposed Supplementary Material .02)

Many commenters, while supportive of the Notice 14-35 Proposal overall, expressed views on proposed Supplementary Material .02.[50] NAELA expressed doubt that the proposed provision would protect vulnerable persons (e.g., persons with disabilities or who are incapacitated) in any meaningful way. The views of many other commenters generally related to the scope of the proposed provision, customer instructions to establish delivery of the customer's account statements to a third party, the circumstances that may warrant an exception to the general requirement for a firm to continue delivering account statements to the customer even where there is a third party delivery arrangement in place, operational concerns, and implementation.

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49 See Regulatory Notice 09-64 (November 2009) (stating that while firms may allocate responsibility for complying with particular requirements between the clearing and the introducing firms, both firms must have policies and procedures in place to ensure that their respective responsibilities are met).

50 See Edward Jones, FAF, Feaver, FSI, GSU, Malecki, NAELA, NASAA, PIRC, SIFMA, WFA, and Wulff.

A. Scope

In the Notice 14-35 Proposal, proposed Supplementary Material .02 pertained to account statements "or other communications" relating to the customer's account. Commenters expressed concerns and sought clarification relating to the scope of the proposed provision.

SIFMA raised concerns with the inclusion of "other communications," stating that the proposed supplementary material could include a host of operational communications with third parties (e.g., custodians, issue and transfer agents, counterparties to trades, banks in connection with disbursements and deposits and a member firm's own vendors) where firms need to send "communications" about a customer's account in order to provide a service requested for the customer. SIFMA requested clarity regarding the scope of "other communications" in the context of the proposed rule. FINRA agrees with the concerns raised by SIFMA in this regard and for clarity, has adjusted the language by deleting the references to "or other communications" from proposed Supplementary Material .02 so that the scope of the propose provision is limited solely to customer account statements.

SIFMA also sought clarification pertaining to the implications of Supplementary Material .02 on a firm's existing obligations under SEA Rule 17a-3(a)(17)(B)(2) and FINRA Rule 3110(c)(2) to confirm a customer's address change. FINRA notes that proposed Supplementary Material .02 is not intended to impose additional requirements that would impact a firm's current obligations to validate a change in address for a customer under the applicable SEA and FINRA rules.

B. Customer Instructions to Deliver Account Statements to Third Party

Proposed Supplementary Material .02 provides that in general, a member may not send account statements relating to a customer's account to other persons or entities unless the customer has provided written instructions to the member to send such statements to a designated third party. However, in order to comply with Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations, proposed Supplementary Material .02 would provide that a firm is not required to obtain written instructions from the customer to meet the requirements of such applicable rules or regulations.

Several commenters expressed views on the general requirement for firms to obtain written instructions from customers.[51] PIRC expressed its support for the general requirement. NAELA noted that persons with disabilities or who are incapacitated are unlikely able to send written direction to their financial institution to send account statements to a third party. Two commenters questioned the need for written instructions, suggesting that oral instructions should suffice.[52] Other commenters recommended imposing additional methods to validate customer instructions and the nature of the relationship between the customer and third party.[53]

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51 See Edward Jones, FAF, NASAA, and SIFMA.

52 See Edward Jones and SIFMA.

53 See Malecki and NASAA.

a. Oral Instructions

Two commenters recommended that oral consent of the customer, combined with prominent disclosure on the customer's account statements, identifying the third party or interested party that is also receiving statements or other appropriate documentation of such instruction, would lend more flexibility to firms and customers to establish third party delivery of account statements.[54] Edward Jones explained that there was a regulatory distinction between adding a third party to an account to receive account statements and directing all account statements to a third party instead of to the customer, noting that when a third party is being added to an account, a more effective approach would be to require the oral consent of the customer. SIFMA added that oral instructions would prevent the operational challenge of obtaining written consent in instances where written consent is impracticable. These commenters stated that oral consent and disclosure would be consistent with current industry practice.

FINRA notes that similar views were expressed by commenters to the prior rule filing,[55] and FINRA continues to maintain the view that instructions from customers with respect to the delivery of account statements should be in writing to ensure proper consent is received and can be evidenced. FINRA believes that oral instructions are insufficient in this context due to several concerns such as identify theft and privacy concerns, among others, and that firms must be able to document and record a customer's consent to send account statements to a third party. FINRA has permitted firms to act on oral instructions from customers in other circumstances (e.g., trading instructions) largely

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54 See Edward Jones and SIFMA.

55 See supra note 6.

to allow customer and firms to act expeditiously to execute securities transactions that are time sensitive in nature. However, the delivery of customer account statements to a third party presents no such concerns and therefore must require written customer consent for this delivery arrangement.

b. Written Instructions from Third Party or Account Holder of Joint Account

Two commenters raised practical concerns with procuring written instructions from customers.[56] FAF noted that some third parties such as RIAs or retirement custodians have a need to receive customer account statements in order to perform their duties for customers, and these third parties that commonly receive customer account statements may have their own paperwork or form that a customer completes to authorize a designated third party to receive account statements. FAF recommended adjusting the language in the proposed supplementary material to permit a firm to treat a customer's completion of the third party's own paperwork or form as the written instructions from the customer, suggesting that this adjustment would represent a more practical approach to the process by permitting a firm to accept written instructions to authorize the transmission of account statements to a third party directly from such third party rather than from the customer directly. In the alternative, FAF recommended allowing firms to send account statements to third parties without customer consent "by simply relying on the nature of the third party[,]" reasoning that third parties such as RIAs or custodians of individual retirement accounts "have a need to receive a duplicate statement of the client for the client's benefit." FINRA believes that FAF's recommendation does not assure

56 See FAF and SIFMA.

the goal of limiting provision of customer account information to situations where the customer affirmatively instructed or consented to delivery of account statements to third parties. Moreover, FINRA believes that proposed Supplementary Material .02 in its current form would not preclude a customer from using a thirty party's form or other template to help a customer convey the written instructions directly to the firm to establish the delivery account statements to a third party such as an RIA or other custodian of customer assets.

With respect to accounts that have more than one owner, SIFMA noted that there could be significant operational challenges in requiring all joint account holders to consent to a third party delivery arrangement requested by one of the account holders. SIFMA expressed the belief that in such cases, a firm should be able to accept instructions from one accountholder to send statements to a third party, provided the accountholder making the request would not be seeking to suppress the delivery of customer account statements to the other joint accountholder(s) in accordance with the rule. FINRA believes that the proposed provision would contemplate the situation SIFMA described to require a customer, irrespective of the type of account—joint or individual—to provide written instructions to the firm to send account statements to a third party without affecting the delivery of account statements to the other joint accountholders.

c. Validation of Customer Instructions

Proposed Supplementary Material .02 does not specify the manner in which firms must validate a customer's written instructions or the nature of the relationship between the customer and third party receiving the account statements. Two commenters

recommended ways to verify a customer's instructions and the nature of the customer's relationship to the third party.[57]

NASAA recommended rigorous verification of a customer's instructions by requiring a firm to obtain a medallion signature guarantee or notarization to help ensure that a customer in fact wishes to have the account statements delivered to a third party. NASAA also recommend requiring the firm to provide the customer with notices, delivered on the same frequency as account statements, indicating that the account statements have been delivered to the third party pursuant to the customer's instructions, and directing the customer to contact the firm to inform the firm if he or she no longer desires to have the account statements delivered to the designated third party. Feaver seemed to express support for a customer's ability to send account statements to a third party, but also seemed to suggest that some verification or confirmation practices as to the identity of the third party be imposed. Malecki expressed its support for the ability for a customer to elect to have account statement delivered to a third party, noting that the ability for a family member, tax professional, estate lawyer or trusted friend to be able to obtain copies of statements may be important to quickly identify and prevent fraud. However, Malecki suggested that the proposed provision go further and require a firm to identify the relationship between the customer and the third party receiving the account statements in order to clearly delineate the roles of the respective parties, noting that a firm should clearly understand the third party's relationship to the customer.

FINRA believes that a firm's obligation to conduct the requisite validation pertaining to servicing a customer's account are addressed under Rule 2090 (Know Your

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57 See Malecki and NASAA.

Customer). Rule 2090 requires a firm to use reasonable diligence in regard to the opening and maintenance of every account, to know the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer. The "essential facts" to "knowing the customer" include, among other things, those facts required to act in accordance with any special handling instructions for the account and understand the authority of each person acting on behalf of the customer. Thus, under Rule 2090, member firms are generally required to know the names of any persons authorized to act on behalf of a customer and any limits on their authority that the customer establishes and communicates to the member firm.

d. Exception to the Requirement to Obtain Instructions from Customer

As noted above, proposed Supplementary Material .02 would clarify that notwithstanding the general requirement for a firm to obtain written instructions from the customer to transmit accounts statements to a third party, a firm may provide such statements under Rule 2070, Rule 3210, or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rules or regulations.

SIFMA expressed its appreciation for this clarification, but stated that the exception should be broadened to permit firms to send customer account statements to an employer that is a registered investment company or RIA, both of which are also required to obtain this information about their associated person's personal securities dealings under Rule 17j-1 under the Investment Company Act of 1940[58] and the provisions of an

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58 17 CFR 270.17j-1.

investment advisor's code of ethics as required by Rule 204A-1 under the Investment Advisors Act of 1940,[59] respectively. In response to this comment, FINRA has adjusted the language in proposed Supplementary Material .02 to refer, in general terms, to other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rule.

C. The Requirement to Continue Delivery of Account Statements to Customer Even with Third Party Delivery Arrangement in Place

Consistent with the Notice 14-35 Proposal, the proposed rule change would limit a customer's ability to decline receiving account statements by requiring a firm to continue sending account statements to the customer even where the customer directs the firm, in writing, to send the customer's account statements to a third party. This general requirement is intended to serve investor protection functions by ensuring that the customer is able to monitor and verify the transactions occurring in the customer's account. The proposed provision accords with the Commission's policy view in the context of the delivery of transaction confirmations to a third party (e.g., a fiduciary); that is, where a customer has duly waived receipt of confirmations, the customer may not waive the receipt of periodic account statements.[60]

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59 17 CFR 275.204A-1.

60 In adopting amendments to SEA Rule 10b-10 in 1994, the Commission acknowledged that a customer may waive the personal receipt of an immediate confirmation in the context of where a fiduciary has discretion over the customer's account under the following conditions: "the broker-dealer must (1) obtain from the customer a written agreement that the fiduciary receive the immediate confirmation; and (2) send to the customer a periodic report, not less frequently than quarterly, containing the same information that would have been contained in an immediate confirmation. [Citation omitted]. The customer may not waive this periodic report. [Citation omitted]." See Securities Exchange Act Release No. 34962 (November 10, 1994), 59 FR 59612, 59614 (November 17, 1994) ("SEA Rule 10b-10 Release"). As indicated in the Amended Rule Filing,

With the exception of GSU favoring the continuous statement delivery requirement, several other commenters expressed concerns with it, asserting, in general, that the proposed provision would undermine a customer's express wishes to decline receiving account statements and would not further customer protections by increasing the risk for fraudulent activity, particularly for investors who are elderly, disabled or incapacitated, or who rely on a caregiver in an assisted living facility or at home.[61] SIFMA offered several suggestions for FINRA to consider, including to delete the proposed general continuous delivery requirement or in the alternative, follow the existing approach under NYSE Rule 409T(b). Other suggestions included creating exceptions to the general delivery requirement under specified circumstances (e.g., incapacitation)[62] or permitting a customer to opt-out of receiving statements.[63] The comments to proposed Supplementary Material .02 as presented in the Notice 14-35 Proposal are set forth below.

FINRA reiterates the reminder to members that they remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that members may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (e.g., the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and Rule 2231, as proposed herein, is not intended to alter any such conditions or requirements.

61 See Edward Jones, FSI, NAELA, NASAA, SIFMA, WFA, and Wulff.

62 See SIFMA and Wulff.

63 See PIRC.

a. The Existing Approach Set Forth Under NYSE Rule 409T(b)

As described above, NYSE Rule 409T(b) currently allows a customer to instruct a firm to direct account statements, confirmations or other communications to a third party holding a POA over the account where the customer either provided the firm written instructions or the firm continued to send the customer duplicate copies of the statements, confirmations or other communications. Thus, under NYSE Rule 409T(b), a customer who has declined or waived the receipt of account statements may then effectively forego the opportunity to directly monitor account activities.

SIFMA noted that in the SEA Rule 10b-10 Release, the Commission did not invalidate NYSE Rule 409T(b). However, when discussing the application of the Commission's policy and its relationship with NYSE Rule 409T, the Commission suggested that NYSE Rule 409T was less restrictive than the Commission's policy view by noting that under NYSE Rule 409T, a customer "who waived receipt of the immediate confirmation would receive more information with his quarterly account statement than that currently required under NYSE Rule [409T]. To the extent the rule of the NYSE, or any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern. Thus, an NYSE member wishing to take advantage of a waiver would be required to adhere to these Commission requirements in addition to any obligations imposed by Rule [409T]"[64]

SIFMA observed that proposed Supplementary Material .02 would be more restrictive than NYSE Rule 409T(b), particularly as applied to the delivery of account

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64 See SEA Rule 10b-10 Release, supra note 60, at 59 FR 59614 n.36.

statements in connection with the custody of advisory accounts, noting that duplicate account statements are not required to be sent to customers when a designee has been appointed under Rule 206(4)-2 of the Investment Advisers Act of 1940 ("Advisers Act").[65] SIFMA expressed the belief that NYSE Rule 409T(b) has served both the investing public and the industry well, and that FINRA has not established widespread complaints or problems in this area that would justify such a substantial, potentially risky, and costly expansion of account statement delivery obligations. SIFMA urged FINRA to delete the general requirement or alternatively, retain the more flexible approach in NYSE Rule 409T(b). By taking the approach in NYSE Rule 409T(b), SIFMA expressed the view that firms would then be able to honor the requests of customers, and those with appropriate legal standing on behalf of their customers, to direct account statements to a designated third party and avoid the additional costs and potential account security concerns associated with sending account statements to the customer's address of record. SIFMA recommended that FINRA amend proposed Supplementary Material .02 to model the requirements of NYSE Rule 409T(b) by replacing "and" with "or" in the proposed rule text to provide firms with greater flexibility to comply with the proposed rule and defining the term "customer," for purposes of proposed Supplementary Material .02 to mean a person with the legal authority to act on behalf of an accountholder, including an attorney-in-fact, a court-appointed fiduciary or person with similar legal authority.

SIFMA also noted that firms are currently subject to rules that mitigate concerns that a customer might be financially exploited by an individual who has authority over

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65 17 CFR 275.206(4)-2.

the customer's financial affairs. For example, SIFMA stated that Rule 2090 requires a firm to use reasonable diligence in regard to the opening and maintenance of every account, to know the essential facts concerning every customer, and essential facts would include those about anyone who has authority over a customer's account. In addition, SIFMA noted that a firm is required to have reasonable procedures in place to identify and react to "red flags" that might indicate the occurrence of potential fraud.

b. Create Exceptions to the General Requirement to Continue Delivery of Account Statements to Customer

In the Notice 14-35 Proposal, FINRA requested comment on the situations that would merit an exception from the general requirement to continue delivery of account statements to a customer. Several commenters expressed views on the general requirement for a firm to continue delivering account statements to the customer even where there is a third party delivery arrangement in place, stating that imposing such a requirement as a matter of course would increase a customer's risk of exposure to fraud or other misconduct.[66] FINRA recognizes that in some cases, it may not be in the customer's interest to continue receiving account statements when there is an arrangement to deliver the statements to a third party. In response to comments, FINRA has adjusted proposed Supplementary Material .02 as presented in the Notice 14-35 Proposal by creating an exception that would permit a "court-appointed fiduciary" (as that term is described in the proposed provision) to stop sending account statements to the customer upon written instructions from the court-appointed fiduciary, and other specified conditions. Absent a court-appointed fiduciary, a firm cannot cease delivering

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66 See Edward Jones, FSI, NASAA, SIFMA, WFA, and Wulff.

account statements to a customer. Further, FINRA believes that a customer may authorize the firm to satisfy the requirement to continue delivering account statements through electronic delivery consistent with proposed Supplementary Material .03, which would eliminate the need for delivery of physical statements to the customer's home, while still providing the customer the opportunity to review their account statements in a timely manner. FINRA believes that proposed Supplementary Material .02, as adjusted, creates an appropriate balance between investor protection and the concerns raised by the commenters. As set forth below, some commenters described a variety of circumstances that should warrant an exception to the general requirement. These circumstances relate to customers with legal representatives and other trusted contacts; customers who are elderly, disabled or incapacitated; and foreign and high net worth customers.

(I) Legal Representative and Other Trusted Contacts

SIFMA expressed concern that proposed Supplementary Material .02 could potentially erode the legal authority of the person granted a POA and may potentially create a conflict with state laws governing POAs. SIFMA noted that 17 states have laws that outline penalties for financial institutions that refuse to respect the legal standing of a person acting with the authority of a POA. Two commenters expressed concern that the proposed provision would also prevent the operability of a springing POA or limit its usefulness because a springing POA only becomes effective under certain circumstances outlined by the customer.[67] SIFMA added that the proposed provision would create a situation where a person with the power to stand in the shoes of the incapacitated person, and perform many other aspects of his or her legal rights, would not be able to redirect

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67 See SIFMA and WFA.

mail away from an address at which the incapacitated person once resided. Two commenters indicated that an exception should also be made for legal executors of a decedent's estate or for a person with legal authority to act on behalf of a customer.[68] FAF expressed concern that the proposed provision does not create an exception for certain third parties, such as investment advisers, trust departments, custodians and pension plan trustees. FAF indicated that these entities need to receive customer accounts statements to perform their duties for the customer.

(II) Elderly, Disabled or Incapacitated Customers

Several commenters contended that mandating the delivery of account statements to a customer who is deemed incapacitated or impaired, living in a nursing facility or receives in-home care, or an elderly customer who has expressly designated another person or entity to receive the statements would increase the risk of unintended or involuntary exposure of financially sensitive information to third parties.[69] Wulff noted that these persons would involuntarily have their financial affairs and personally identifiable information exposed to unvetted third parties. PIRC recommended that a customer be permitted to opt-out, in writing, of receiving account statements, particularly where the customer is disabled or incapacitated, or a customer resides in a nursing home facility. Two commenters stated that this class of investors should be able to decline delivery of their statements and instead have them delivered to an authorized third party.[70] Edward Jones recommended that FINRA consider an exemption to the general

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68 See FSI and Wulff.

69 See Edward Jones, FSI, NASAA, SIFMA, WFA, and Wulff.

70 See Edward Jones and FSI.

requirement where a firm has received written documentation from a medical professional verifying the disability or incapacity of the customer. Several commenters expressed the view that the preference of the customer, as to his or her own best interests, should govern.[71]

(III) Foreign and High Net Worth Customers

SIFMA raised similar concerns with respect to foreign or high net worth customers who would also be at risk of exposure of their financial information since in some foreign jurisdictions, mail delivery may not be secure, and a display of wealth may put such customers at risk of harm (e.g., kidnapping for ransom). SIFMA noted that high net worth customers do not want sensitive information contained within statements to be delivered to their homes because of unique challenges such as frequent travel or multiple homes and, as such, often delegate the handling and review of statements to a trusted agent or third party, who may not be a legal representative of the customer. While Rule 3150, incorporated under proposed Supplementary Material .04, cites safety or security concerns as examples of acceptable reasons for a customer's written instruction to "hold mail," SIFMA noted that the circumstances described above are not "hold mail" arrangements under Rule 3150. SIFMA indicated that arrangements to deliver statements to a third party for similar reasons should be permitted with written customer instruction.

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71 See FSI, PIRC, and Wulff.

D. Operational Concerns and Implementation of Proposed Supplementary Material .02

Two commenters requested prospective application of the provision.[72] Edward Jones stated that requiring remediation of existing accounts would impose significant costs and would not provide meaningful additional protection to investors. SIFMA emphasized the need for prospective application due to material operational challenges, which include persons who have become incapacitated since providing the original instruction to direct mail to a third party, as well as the significant costs associated with remediating hundreds of thousands of account relationships. The proposed rule change would apply prospectively, and FINRA intends to give member firms sufficient time to comply with the proposed rule change.[73]

6. Proposed Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations)

Proposed Supplementary Material .03 would allow a firm to satisfy its account statement delivery obligations under Rule 2231 by using electronic media, subject to

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72 Edward Jones and SIFMA.

73 A member firm with a customer having a pre-existing arrangement to deliver account statements to a third party that was established before the effective date of proposed Rule 2231.02 would not be subject to the requirements of the proposed new rule solely with respect to such account until that pre-existing third party delivery arrangement is modified in any manner. Where any existing or new customer of the firm seeks to establish a third party delivery arrangement on or after the effective date of proposed Rule 2231.02, the firm would be subject to the terms of the new rule. Relatedly, in connection with its support for the proposed rule change to eliminate NYSE Rule Interpretation 409T(a)/03, SIFMA requested that FINRA confirm in a rule release commentary or an adopting Regulatory Notice that though the conditions in NYSE Rule Interpretation 409T(a)/03 would no longer apply, firms may continue to rely on this NYSE interpretation for preexisting agreements that use third party agents. The proposed rule change is not intended to impact preexisting agreements that use third party agents if they comport with applicable FINRA rules and guidance.

compliance with standards established by the SEC on the use of electronic media for delivery purposes. As stated above, this provision is consistent with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.[74]

SIFMA asserted that the cost burden associated with this new requirement would be particularly severe for members where customers have not elected to receive electronic account communications. GSU supported the use of electronic delivery of account statements only if the customer affirmatively elects that option on the basis that a customer who is not technologically savvy might not know how to electronically opt-out of an electronic statement policy, creating confusion as well as the possibility of a customer not being able to access his or her statements. The Center for Copyright Integrity urged that customer account statements should be delivered in paper form only on the belief that paper format will keep customers better informed on the contents of their files.

Proposed Supplementary Material .03 does not mandate the use of electronic media to deliver account statements, but permits a firm to do so subject to the standards established by the SEC. A firm may be able to evidence satisfaction of delivery obligations, for example, by obtaining the intended recipient's informed consent to deliver through a specified electronic medium and ensuring that the recipient has appropriate notice and access. SEC guidance describes "informed consent" as one that specifies the electronic medium or source through which the information will be delivered and the period during which the consent will be effective, and describes the

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74 See supra note 20.

information that will be delivered using such means.[75] FINRA notes that proposed Supplementary Material .03 is not intended to impose any new delivery obligations beyond existing requirements.

7. Proposed Supplementary Material .05 (Information to be Disclosed on Statement)

Proposed Supplementary Material .05, derived largely from NYSE Rule Interpretation 409T(a)/02, including note 1, would specify the information that must be clearly and prominently disclosed on the front of a customer account statement, i.e., the identity of the introducing and carrying organizations, that the carrying organization is a member of SIPC, and the opening and closing account balances for the customer's account.

Two commenters expressed views on the appearance of SIPA disclosures on account statements.[76] GSU indicated its support for the requirement to provide the SIPA disclosure on the front of an account statement because doing so would aid smaller investors to seek the help they might need in order to better understand their statements and monitor their accounts. PIRC recommended that FINRA provide guidelines with respect to how the SIPA disclosure should appear on an account statement, citing as an example, that FINRA should consider requiring firms clearly highlight the SIPA disclosure to prevent firms from "burying SIPA disclosures in the back of accounts statements or in the fine print, which customers may not be able to locate easily."

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75 See supra note 20.

76 See GSU and PIRC.

FINRA believes that proposed Supplementary Material .05 gives member firms adequate guidance and allows flexibility in providing this information while also ensuring that the SIPC status of the clearing firm is disclosed on the front of the statement.[77]

8. Use of Logos, Trademarks, etc. (Proposed Supplementary Material .07)

Proposed Supplementary Material. 07 incorporates, without substantive change, NYSE Rule Interpretation 409(a)/05, which governs the use of trademarks and logos of other persons on account statements by requiring that firms not use the logo, trademark or other similar identification of a person (other than the introducing firm or clearing firm) on a customer account statement in a manner that is misleading or causes customer confusion. SIFMA requested clarification as to what logos, trademarks, and other similar identification would be "misleading" to customers or cause "customer confusion." To the extent commenters have questions about the application of the proposed rule to particular facts and circumstances, FINRA will work with the industry to address interpretive issues as needed.

9. Other Comments

SIFMA requested confirmation that unless a customer requests otherwise, a firm may combine account statements for accounts of two or more customers sharing the same

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77 Rule 2266 (SIPC Information) requires all member firms, unless they are excluded from SIPC membership and are not SIPC members, or whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such member firms also must provide SIPC's website address and telephone number, and provide all customers with the same information, in writing, at least once each year.

address in the same envelope addressed to one member of the household. In the SEC Householding Release, the SEC stated that it was adopting the "householding" rules because "the distribution of multiple copies of the same document to security holders who share the same address often inundates security holders with unwanted mail and causes the company to incur higher than necessary printing and mailing costs."[78] To avoid duplication, the SEC rule allows funds to deliver a single copy of the same document to investors who share the same address.[79] FINRA has not formally provided guidance on the issue of "householding" customer account statements and believes that the commenter raises an issue that is outside the scope of this proposed rule change. As such, FINRA believes that the questions raised by SIFMA requires further discussion with the industry and investors to better understand the relevant facts and circumstances.

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

Within 45 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:

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78 See Securities Act Release No. 7912 (October 27, 2000), 65 FR 65736 (November 2, 2000) ("SEC Householding Release").

79 See Rule 154 (Delivery of prospectuses to investors at the same address) under the Securities Act of 1933. 17 CFR 230.154. See also SEA Rule 14a-3 (Information to be furnished to security holders). 17 CFR 240.14a-3. Rules 154 and 14a-3 permit the "householding" of prospectuses, annual reports, investment company semi-annual reports, and proxy statements or information statements to investors who share an address. Firms must obtain affirmative consent from investors or may rely on a finding of implied consent, subject to the conditions outlined in the Rule.

(A) by order approve or disapprove 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-2021-024 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2021-024. 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 website (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 website viewing and printing 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-024 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.[80]

Jill M. Peterson
Assistant Secretary

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80 17 CFR 200.30-3(a)(12).

Exhibit 2a

OMB APPROVAL	
OMB Number:	3235-0045
Expires:	June 30, 2010
Estimated average burden hours per response	38

Page 1 of 45

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 028
Amendment No.

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Rule

- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

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	Kosha	Last Name	Dalal
Title	Associate Vice President and Associate General Counsel		
E-mail	kosha.dalal@finra.org		
Telephone	(202) 728-6903	Fax	(202) 728-8264

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 04/22/2009

By Marc Menchel (Name)

Executive Vice President and General Counsel (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.

Marc Menchel, marc.menchel@finra.org

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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.

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[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 409[3] (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 accounts

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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.

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.

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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.

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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.

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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.

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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.

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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 409[4] (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.

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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, 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.[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.

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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:

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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]

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[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.

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[8] 15 U.S.C. 78o–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

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[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.

* * * * *

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.]

* * * * *

NYSE Rule Interpretation

* * * * *

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 service[1];]

[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

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[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 combing 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

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[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.]

* * * * *

Exhibit 2b

OMB APPROVAL
OMB Number: 3235-0045 Expires: August 31, 2011 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 87

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2009 - * 028
Amendment No. (req. for Amendments *) 1

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal
☐	☑	☐

Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule

- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

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 * Kosha Last Name * Dalal

Title * Associate Vice President and Associated General Counsel

E-mail * kosha.dalal@finra.org

Telephone * (202) 728-6903 Fax (202) 728-8264

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 07/12/2011

By Patrice Gliniecki

(Name *)

Senior Vice President and Deputy General Counsel

(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.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required) Add Remove View	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 (required) Add Remove View	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 Add Remove View 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 Add Remove View 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 Add Remove View	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 Add Remove View	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 Add Remove View	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") this Amendment No. 1 to SR-FINRA-2009-028, 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),[2] and certain of its related interpretations. FINRA filed SR-FINRA-2009-028 with the Commission on April 22, 2009. On May 21, 2009, the Commission published the proposed rule change for comment in the Federal Register[3] and received 12 comment letters.[4] Based on the

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1 15 U.S.C. 78s(b)(1).

2 The SEC approved the deletion of Incorporated NYSE Rule 409(f) in connection with the adoption of FINRA Rule 2232 (Customer Confirmations). See Securities Exchange Act Release No. 63150 (October 21, 2010); 75 FR 66173 (October 27, 2010) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and To Delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f)). The rule change became effective on June 17, 2011. See Regulatory Notice 10-62 (December 2010).

3 See Securities Exchange Act Release No. 59921 (May 19, 2009), 75 FR 23912 (May 21, 2009) ("Proposing Release"). The comment period closed on June 11, 2009.

4 Letter from Gene Woodham, Chief Operating Officer, Sterne Agee Group, Inc., dated June 9, 2009 ("Sterne Agee Letter"); letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated June 10, 2009 ("ICI Letter"); letter from Jesse Hill, Director of Regulatory Services, Edward Jones, dated June 10, 2009 ("Edward Jones Letter"); letter from Dale E. Brown,

comments received, FINRA is filing this Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate. FINRA requests that the Commission publish Amendment No. 1 in the Federal Register to allow interested parties the ability to comment on changes made to the proposal in light of comments.

FINRA is including with this Amendment No. 1 an Exhibit 4 that shows the changes from the original rule text set forth in the proposed rule change. Exhibit 5 shows the changes from the current rule.

(b) Upon Commission approval and implementation by FINRA 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

President & CEO, Financial Services Institute, Inc., dated June 11, 2009 ("FSI Letter"); letter from Sean C. Davy, Managing Director, Corporate Credit Markets Division, Securities Industry and Financial Markets Association (SIFMA), New York, New York, dated June 11, 2009 ("SIFMA Letter"); letter from David J. Pearlman, Chair, Regulatory Affairs Committee, College Savings Foundation, dated June 11, 2009 ("College Savings Foundation Letter"); letter from John S. Markle, Deputy General Counsel, Regulatory Operations, TD AMERITRADE Holding Corporation, dated June 11, 2009 ("TD Ameritrade Letter"); letter from Bari Havlik, Chief Compliance Officer, Senior Vice President, Charles Schwab & Co., Inc., dated June 11, 2009 ("Schwab Letter); letter from John Muschalek, Managing Director, Clearing Services Division, First Southwest Company, dated June 11, 2009 ("First Southwest Company Letter"); letter from Jonathan Feigelson, SVP, General Counsel, TIAA-CREF, New York, New York, dated June 11, 2009 ("TIAA-CREF June Letter"); letter from Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, dated June 11, 2009 ("Sutherland Asbill & Brennan Letter"); and letter from Jonathan Feigelson, SVP, General Counsel, TIAA-CREF, New York, New York, dated June 13, 2009 ("TIAA-CREF July Letter").

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. The implementation date will be no later than 365 days following Commission approval.

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"),[5] 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 409 (Statements of Accounts of Customers), except for paragraph (f);[6] and (2) Incorporated NYSE Rule Interpretations 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

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5 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).

6 See supra note 2.

incorporate certain provisions of Incorporated NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

Rule Filing History

On April 22, 2009, FINRA filed with the Commission SR-FINRA-2009-028, a proposed rule change to adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook. The proposed rule change would require each general securities member to send account statements at least once each calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer, subject to certain new exceptions proposed in this Amendment No. 1; 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. The proposed rule change would also continue the exception (subject to specified conditions) for customer accounts carried solely for the purpose of execution on a delivery versus payment/receive versus payment (DVP/RVP) basis.

On May 21, 2009, the SEC published the proposed rule change for comment in the Federal Register[7] and received 12 comment letters.[8] Based on the comments received, FINRA is filing this Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate.

FINRA requests that the Commission publish Amendment No. 1 in the Federal Register to allow interested parties the ability to comment on changes made to the proposal in light of comments.

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7 See supra note 3.

8 See supra note 4.

Proposed Changes in Amendment No. 1

In light of the comments, FINRA is proposing to exclude certain account activities from the proposed monthly account statement delivery requirement by adding new paragraph (c) to proposed FINRA Rule 2231. Proposed paragraph (c) of FINRA Rule 2231 would expressly exclude certain account activities from the monthly account statement delivery requirement. These activities would continue to require delivery of quarterly account statements, subject to new proposed Supplementary Material .01 (Compliance with SEA Rule 10b-10) that provides a general reminder that members remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of Transactions) that a member may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and FINRA Rule 2231 is not intended to alter any such conditions or requirements. FINRA also is proposing to amend proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons or Entities)[9] to: (1) clarify that members are not required to obtain prior written consent to send duplicate account statements or other communications for accounts of associated persons of another member to such other member in complying with NASD Rule 3050 and

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9 FINRA is proposing to add new Supplementary Material .01 (Compliance with SEA Rule 10b-10) as part of this Amendment No. 1 and has therefore renumbered the other proposed Supplementary Material items.

Incorporated NYSE Rule 407;[10] (2) clarify (consistent with any SEC release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that have established the policy that customers should continue to receive periodic account statements when not receiving immediate trade confirmations under SEA Rule 10b-10) that members must continue to deliver customer account statements to customers as provided in the proposed rule even when directed by the customer in writing to send duplicates to a third party;[11] and (3) delete the term "confirmation," from the proposed rule text as delivery requirements for confirmations are governed by SEA Rule 10b-10 and FINRA Rule 2232.[12]

Comments to the Proposed Rule Change

The commenters express general support for the proposed rule change, but have concerns with certain aspects of the proposed rule. Most commenters believe the proposal is too broad. Specifically, most of the comments focus on the following two issues: (1) the proposal to change the delivery requirement for customer account statements from quarterly to monthly; and (2) the proposal's potential conflict with SEA Rule 10b-10 and related guidance. Commenters also raised concerns regarding the general utility of customer account statements, potential environmental impact, availability of alternatives, need for written customer consent to transmit customer

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10 FINRA is proposing to adopt FINRA Rule 3210 (Personal Securities Transactions for or by Associated Persons), which combines and streamlines certain provisions of NASD Rule 3050 and Incorporated NYSE Rule 407. See Regulatory Notice 09-22 (April 2009).

11 See Securities Exchange Act Release No. 34962 (November 10, 1994); 59 FR 59612 (November 17, 1994) (Confirmation of Transactions).

12 See supra note 2.

account statements to third parties, clarification of provisions requiring display of the identity of clearing firms and other issues. In addition, several commenters requested sufficient time to comply with the proposal if it is approved. FINRA discusses its responses to these comments below.

I. General

Three commenters questioned the value of customer account statements generally and stated that the significance of customer account statements has diminished in recent years.[13] Several commenters argue that customer account statements are outdated the day after they are generated and customers now routinely use other up-to-date mediums to review current account activities such as on-line account access, automated phone systems and call centers.[14] In addition, several commenters expressed concern that customer account statements are less effective at helping customers' spot errors, identify theft or other potential problems than these more timely alternatives.[15] One commenter urged FINRA to encourage firms to include disclosure on customer account statements apprising customers of available alternatives for obtaining the most current information.[16] FINRA, however, disagrees with the notion that customer account statements have little or limited utility. FINRA believes that customer account statements continue to serve a significant regulatory purpose and that customers benefit from the receipt of periodic customer account statements.

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13 See SIFMA Letter, TIAA-CREF June Letter and Schwab Letter.

14 See TD Ameritrade Letter, TIAA-CREF June Letter and First Southwest Company Letter.

15 See FSI Letter, TIAA-CREF June Letter and First Southwest Company Letter.

16 See TIAA-CREF June Letter.

Several commenters also raised concerns regarding the environmental impact of the proposal.[17] One commenter estimates the proposal will generate 60 million additional pages each year. The commenter estimates that this would be the equivalent of 7200 trees or 300 tons of paper annually – almost a half of it destined for landfills.[18] While FINRA is mindful of the potential impact of its rulemaking on the environment and related burdens on its members, FINRA believes customer account statements serve a significant purpose in protecting customers and enhancing the overall integrity of the securities market. Moreover, consistent with current guidance, FINRA is proposing to adopt Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations) which allows a firm to provide electronic delivery of customer statements upon affirmative consent of the customer.[19]

II. Proposed Monthly Account Statement Delivery Requirement

1. Monthly Delivery is Not Industry Standard

As set forth in the Proposing Release, paragraph (a) of the proposed rule would impose a new requirement that each general securities member firm send a customer account statement not less than once every calendar month to each customer whose account had account activity during the period since the last statement, and continue to require that such firms send customer account statements not less than once every

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17 See TIAA-CREF June Letter and First Southwest Company Letter.

18 See TIAA-CREF June Letter.

19 SEC guidance to date on the use of electronic media continues to require the affirmative consent of the investor/customer, and FINRA believes such consent should be required for electronic delivery of customer account statements. See Notice to Members 98-3 (January 1998). See also Securities Exchange Act Release No. 42728 (April 28, 2000); 65 FR 25843 (May 4, 2000).

calendar quarter to each customer whose account had a security position or money balance during the period since the last statement. All 12 commenters objected to the scope of the proposed monthly delivery requirement.[20]

Several commenters state that current industry practice continues to be providing customers with account statements on a quarterly-basis, not monthly.[21] They contend that FINRA offers little support for the statement that requiring monthly account statements for customer accounts with account activity "better reflects current industry practice."[22] Another commenter notes that quarterly reporting is the retirement plan industry legal standard and monthly reporting would be at odds with other rules governing the retirement plan industry, including laws enacted by Congress.[23]

Another commenter notes that although a majority of its customers already receive monthly account statements, some customers have expressed a desire to receive them quarterly and mandatory monthly delivery would be costly.[24] Several commenters project that the cost to comply with the new requirement, *e.g.*, to produce, print, stuff and mail additional statements, plus train personnel, would be in the millions.[25] One

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20 See supra note 4.

21 See TIAA-CREF July Letter, SIFMA Letter, TD Ameritrade Letter, FSI Letter and Schwab Letter and Sutherland Asbill & Brennan Letter.

22 Id.

23 See TIAA-CREF June Letter.

24 See Schwab Letter.

25 TD Ameritrade estimates the new requirement will increase costs by $4 - $7 million annually and by tens of millions or more across the industry. TIAA-CREF estimates that the move to monthly statements will cost an additional $16 million in printing and postage expenses per year, which would be passed on to

commenter argues that "[s]caling up the member's compliance systems, training programs, personnel, policies and procedures, and acquiring the resources necessary for such an undertaking, would impose immense administrative costs and burdens on these firms, and ultimately result in the imposition of increased costs on customers."[26] Commenters state that the practical benefits received by investors from monthly statements versus quarterly statements are substantially disproportionate to the inherent cost under a cost benefit analysis.[27]

One commenter further contends that the proposed move to monthly account statement delivery requirements contradicts the 2008 Rand Study and recent efforts by the SEC to streamline disclosures to investors to make them more user-friendly and readable.[28] Another commenter suggests that customers should be permitted to affirmatively elect quarterly delivery of customer account statements with the right to revert to monthly delivery anytime they choose.[29] Another commenter recommends that firms be able to condition the customer's right to receive monthly statements upon consent to electronic delivery.[30]

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customers. Edward Jones estimates the cost of monthly account statements in 2009 would have been $1.5 million.

26 See Sutherland Asbill & Brennan LLP Letter.

27 See Sterne Agee Letter, ICI Letter, Edward Jones Letter, FSI Letter, SIFMA Letter, TD Ameritrade Letter, Schwab Letter, First Southwest Company Letter, TIAA-CREF June Letter, Sutherland Asbill & Brennan Letter and TIAA-CREF July Letter.

28 See FSI Letter.

29 See Schwab Letter.

30 See TIAA-CREF June Letter.

In light of the comments, FINRA is proposing to exclude certain account activities from the proposed monthly account statement delivery requirement. FINRA believes the proposed exclusions (outlined in detail below) strike the correct balance between investor protection and the concerns raised by the commenters.

2. Monthly Delivery is Inconsistent with SEA Section 15A

One commenter asserts that the monthly statement requirement is inconsistent with the statutory requirements of Sections 6 and 15A of the SEA and therefore the proposal should not be approved by the SEC. [31] The commenter contends that FINRA's statement on burden on competition in the rule filing is cursory and falls short of satisfying the instructions in Form 19b-4 to provide detailed and specific statements.

FINRA has complied with all rulemaking obligations imposed by the SEA. As required under Section 19(b)(1) of the SEA, FINRA submitted to the SEC a concise general statement of the basis and purpose of the proposed rule. As stated in its rule filing, 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. In addition, as also stated in the rule filing, the proposed rule change does not create "a burden on competition not necessary or appropriate in furtherance of the purposes of [the SEA]."[32] Further, FINRA tailors its proposed rule changes as narrowly as possible to achieve the

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31 See TIAA-CREF July Letter. FINRA notes that is not a "national securities exchange" and therefore is not subject to the requirements of Section 6 of the SEA.

32 See 15 U.S.C. 78o-3(b)(9).

intended and necessary regulatory benefit. In this regard, FINRA notes that, as further detailed below, in response to commenters' concerns, it is proposing to exclude certain account activities from the proposed monthly account statement delivery requirement.

3. Monthly Delivery Creates Potential Conflict with SEA Rule 10b-10

All commenters contend that the adoption of a monthly delivery requirement for customer account statements would cause the proposed rule change to conflict with SEA Rule 10b-10 (Confirmation of Transactions) and its related interpretations and guidance.[33]

Several commenters note that SEA Rule 10b-10 generally requires that at, or before, the completion of a securities transaction for a customer, a broker-dealer must deliver to the customer written notification (a "confirmation") that contains certain prescribed information about the transaction.[34] Commenters assert that the more immediate nature of transaction confirmations makes them a very effective tool for customers for identifying discrepancies in a customer's account related to erroneous transactions, identity theft, or other potential problems.[35]

All commenters also emphasize that the Commission, through SEA Rule 10b-10(b), rule interpretations, no-action guidance and exemptive relief, has considered the disclosures appropriate for certain types of transactions, balanced risks to investor protection against cost savings for broker-dealers, and determined that it is unnecessary for broker-dealers to send confirmations of certain transactions if certain information

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33 See supra note 4.

34 See Schwab Letter and SIFMA Letter.

35 See Sutherland Asbill & Brennan Letter.

regarding the transactions is disclosed in a quarterly statement.[36] The commenters state that these transactions include, but are not limited to, transactions effected pursuant to a "periodic plan" or "investment company plan," the automatic reinvestment of dividends in the shares of money market funds, other open-end investment companies and unit investment trusts and transactions in certain sorts of "wrap fee" or "payroll deduction" arrangements.[37]

In light of the comments, as further detailed below, FINRA is proposing to add new paragraph (c) to exclude certain account activities from the proposed monthly account statement delivery requirement.[38]

4. Monthly Delivery Creates Potential Conflict with ERISA and Rules Relating to Retirement Plans and MSRB Rules Relating to 529 College Savings Plans

Two commenters are concerned that the proposed monthly delivery requirement for customer account statements will conflict with current quarterly reporting standards in the retirement plan industry.[39] The commenters note that multiple service providers, including broker-dealers, banks and trust companies, offer services to retirement plan participants. These parties are subject to SEA Rule 10b-10, Section 105 of the Employee

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36 See supra note 4.

37 See SIFMA Letter.

38 In proposing the exceptions in new paragraph (c), FINRA reminds firms that they remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that a firm may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and proposed FINRA Rule 2231 is not intended to alter any such conditions or requirements. See proposed FINRA Rule 2231.01.

39 See TIAA-CREF June Letter and ICI Letter.

Retirement Income Securities Act of 1974, as amended ("ERISA"), and applicable banking regulations. The commenters state that these various regulations recognize quarterly statements and changing the requirement for broker-dealers would add confusion and place broker-dealers at a competitive disadvantage with few, if any, benefits.

Similarly, another commenter is concerned that the proposed monthly delivery requirement is at odds with Rule G-15 of the Municipal Securities Rulemaking Board ("MSRB"), which permits that confirmation of transaction in college savings plan transactions may be done on a quarterly basis provided that they are part of a regular investment program meeting the definition of "periodic municipal fund security plan" under the applicable MSRB Rules.[40] The commenter states the proposed rule would create an anomaly because a broker-dealer would be required to provide a monthly statement under FINRA Rules, but would be permitted under MSRB Rules to provide a quarterly statement. Moreover, they argue that such periodic activity does not seem to be the sort that would lend itself to account security issues and/or identity theft concerns. FINRA notes that nothing in this rule proposal is intended to alter the balance of jurisdiction between FINRA and the MSRB and the continued application of MSRB Rules to municipal fund securities. Further, FINRA believes that proposed paragraph (c) that establishes exceptions from the proposed monthly delivery requirement would

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40 See College Savings Foundation Letter.

generally make the proposed rule consistent with the frequency of delivery requirements in MSRB Rule G-15.[41]

5. Carve-Outs from Monthly Delivery Recommended by Commenters

Several commenters recommend that FINRA should permit quarterly account reporting where the only activity in the customer's account consists of (A) certain types of routine activity that does not involve the active participation of the customer ("Passive Activity"); (B) activity that the Commission has determined need only be reported on quarterly account statements rather than in Rule 10b-10 transaction confirmations ("10b-10 Exempt Activity"); and (C) occasional transactions in retirement accounts for which an immediate confirmation is sent to the customer when the predominant activities in such account are either Passive Activity or 10b-10 Exempt Activity.[42] In addition, one commenter notes that similar activity with respect to ERISA plans should be exempted as well from the monthly delivery requirements.[43] The commenters note that the activities described above are generally routine and recurring activities in a customer's account that are better suited to quarterly reporting. In addition, they state that these routine and

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41 See MSRB Rule G-15(a) (Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers), which provides in relevant part that "such broker, dealer or municipal securities dealer gives or sends to such customer within five business days after the end of each quarterly period, in the case of a customer participating in a periodic municipal fund security plan, or each monthly period, in the case of a customer participating in a non-periodic municipal fund security program, a written statement disclosing . . . ."

42 See SIFMA Letter, FSI Letter, Sutherland Asbill & Brennan Letter and TIAA-CREF June Letter.

43 See TIAA-CREF June Letter.

regular activities in a customer's account are of the type that typically do not raise fraud and/or identity theft concerns.[44]

6. FINRA Response to Monthly Delivery Comments

In response to the comments raised, FINRA is proposing to add new paragraph (c) to proposed FINRA Rule 2231. Proposed paragraph (c) would expressly exclude certain account activities from the monthly account statement delivery requirement. These activities would continue to require delivery of quarterly account statements, subject to new proposed Supplementary Material .01 (Compliance with SEA Rule 10b-10) that provides a general reminder that members remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position and exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of Transactions) that a member may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and FINRA Rule 2231 is not intended to alter any such conditions or requirements.

Specifically, subject to proposed Supplementary Material .01, a member could send quarterly account statements to customers instead of monthly account statements pursuant to paragraph (a) of the proposed rule if:

(1) The member relies on an appropriate rule, regulation, release, interpretation, "no-action" position or exemption issued by the SEC or its staff that (A) specifically applies to the fact situation of the activity; (B) provides relief

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44 See supra note 42.

from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (C) permits quarterly delivery of customer account statements; or

(2) The activity to the account consists only of the kind listed below:

(A) the receipt of funds in the account that are not directly from a purchase or sale transaction, including the receipt of interest and dividends;

(B) the automatic reinvestment of funds in the account pursuant to and in accordance with a customer's standing instructions (*e.g.*, a dividend reinvestment plan);

(C) the transfer of uninvested customer credit balances into or out of money market mutual funds or bank deposits pursuant to a "sweep program" pursuant to consent of the customer and implemented consistent with applicable regulatory guidance, except where the customer's balance in the bank deposit "sweep program" during the period exceeds the amount insured by the FDIC coverage;

(D) all fees and charges to the account that have been fully disclosed to the customer and comply with all disclosure and applicable regulatory requirements (*e.g.*, account fees, short position charges, interest on debit balances or charges for dividends on securities held short in the account).

(3) A member may rely on an exclusion under this paragraph (c) only if customers are provided access to current information on their accounts via the Internet and by telephone.

FINRA believes the proposed exclusions for these types of account activities are appropriate as they strike the correct balance between investor protection and the concerns raised by the commenters.

III. Proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons or Entities)

Proposed Supplementary Material .02 would require written instructions from the customer to address and/or send customer statements or other communications relating to the customer's account to other persons or entities. One commenter contends that this requirement would conflict with Incorporated NYSE Rule 407 and NASD Rule 3050.[45] As further detailed therein, these rules generally address the obligation of a member carrying an account in which an associated person of another member has an interest to send duplicate confirmations and accounts statements to such other member. The commenter seeks clarification that members are not required to obtain the written consent of the customer before sending duplicate statements, confirmations or other communications pursuant to NYSE Rule 407 or NASD Rule 3050. FINRA agrees that compliance with such rules should not be deemed a violation of this provision and is proposing to revise the proposed rule text to make this clear.

Two commenters assert that the proposed rule should allow a customer's oral consent to be sufficient to send a duplicate account statement, confirmation, or other communication, provided that the customer also receives such account statement, confirmation or other communication and the member relying on such oral consent lists

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45 See SIFMA Letter. See also supra note 10.

on the customer's (quarterly or monthly) account statement the names of any other persons to whom duplicate communications are being sent.[46] One of these commenters notes that firms are permitted to accept oral instructions for a variety of customer transactions and contends that customers should be afforded the same level of convenience in this regard so long as the firm has adequate controls in place.[47] FINRA does not believe that oral instructions are sufficient in this context. Due to several concerns (*e.g.*, identify theft, privacy concerns, etc.), FINRA believes firms must be able to document and record customer consent to send customer account statements to third-parties. FINRA has permitted firms to act on oral instructions from customers in other contexts (*e.g.*, trading instructions) largely to allow customer and firms to act expeditiously to execute securities transactions that are time-sensitive in nature. However, the delivery of customer account statements presents no such concerns and therefore should require written customer consent.

Accordingly, in response to comments, FINRA is proposing to amend proposed Supplementary Material .02 to: (1) clarify that members are not required to obtain prior written consent to send duplicate account statements or other communications for accounts of associated persons of another member to such other member in complying with NASD Rule 3050 and Incorporated NYSE Rule 407; (2) clarify (consistent with any SEC release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that have established the policy that customers should continue to receive periodic account statements when not receiving immediate

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46 See SIFMA Letter and Schwab Letter.

47 See Schwab Letter.

trade confirmations under SEA Rule 10b-10) that members must continue to deliver customer account statements to customers as provided in the proposed Rule even when directed by the customer in writing to send duplicates to a third party;[48] and (3) delete the term "confirmation," from the proposed rule text as delivery requirements for confirmations are governed by SEA Rule 10b-10 and FINRA Rule 2232.[49]

IV. Proposed Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations)

One commenter urges FINRA to adopt electronic delivery of customer account statements as the default delivery mechanism.[50] The commenter argues that electronic delivery provides more timely information to customers and a cost savings to firms. However, another commenter is concerned that requiring individual customers to affirmatively opt for electronic delivery will act to negate these benefits, but notes that further use of electronic delivery methods raises larger issues that FINRA should consider on a more global basis, rather than solely in the context of periodic customer account statements.[51] FINRA believes that proposed Supplementary Material .03 is consistent with current SEC guidance on the use of electronic media which, among other things, requires affirmative consent of the customer for electronic delivery of certain documents.[52]

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48 See supra note 11.

49 See supra note 2.

50 See TIAA-CREF June Letter.

51 See Sutherland Asbill & Brennan Letter.

52 See supra note 19.

V. Proposed Supplementary Material .04 (Information to be Disclosed on Statement)

One commenter seeks clarification of the requirements in paragraphs (a) and (b) and contends that the requirements are in conflict.[53] Proposed paragraph (a) requires disclosure of the identity of the introducing firm and the clearing firm, if different, and their respective contact information on the front of the statement, but allows the identity and contact information of the clearing firm to be appear on the back of the statement so long as it is bold and prominent. Proposed paragraph (b) requires that the front of the statement must clearly disclose that the clearing firm is a member of SIPC. FINRA believes the two provisions are not inconsistent. Proposed paragraph (a) gives firms the option to provide the identity and contact information of the clearing firm on the back of the statement if the firm chooses; it does not require such placement. Proposed paragraph (b) simply requires SIPC disclosure, which can be accomplished either by a general statement or by identifying the clearing firm by name. FINRA believes these provisions allow firms some flexibility in providing this information, while also ensuring that the SIPC status of the clearing firm is disclosed on the front of the statement.

VI. Proposed Supplementary Material .07 (Use of Summary Statements)

One commenter objects to proposed Supplementary Material .07 (as renumbered in this Amendment No. 1) on the Use of Summary Statements.[54] The supplementary material would require, among other things, that the "beginning and end of each separate statement (*e.g.*, summary, brokerage, mutual fund, banking, insurance, etc.) be clearly

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53 See SIFMA Letter.

54 See TIAA-CREF June Letter.

distinguishable by color, pagination or other distinct form of demarcation." The commenter asks FINRA to "clarify that the use of prominent disclosure within summary statements that aggregate accounts held or serviced by multiple parties is adequate to satisfy, or may be used in lieu of, [the above set forth requirement]." FINRA believes the term "other distinct form of demarcation," provides firms the flexibility to format summary statements. Firms are not required to place separate statements on separate pages, but are required to format the statements in such a manner as to make them distinguishable on their face. The use of prominent disclosure with footnotes or other distinct forms of demarcation can be sufficient so long as accounts held or serviced by multiple parties are clearly distinguishable. FINRA believes these guidelines are beneficial because they establish standards to provide clarity and reduce confusion to customers when receiving summary statements.

VII. Miscellaneous Comments

One commenter seeks clarification on what constitutes a "general securities business" for purposes of triggering the customer account statement delivery requirement.[55] They argue that a firm that has multiple business lines which include varied brokerage and securities products and services may carry customer accounts or receive or hold customer funds or securities in connection with one business line or product or service but not another. They seek clarification that the rule will apply only to those portions of a firm's business which triggers the classification – not all lines or services. Another commenter requests clarification that a "general securities member" does not include members that are relying on an SEC Exemptive Order relating to

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55 Id.

FINRA Rule 2330 (formerly NASD Rule 2821), which established sales practice standards regarding recommended purchases and exchanges of deferred variable annuities.[56]

In defining the term "general securities member," current NASD Rule 2340 and proposed FINRA Rule 2231 provide that a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this rule. FINRA notes that the proposed rule change does not amend the current definition of "general securities member" as set forth in NASD Rule 2340 and nothing in this proposal is intended to alter the obligations between clearing firms and introducing firms. If the commenter or others have concerns about the application of the rule in particular situations based on the structure of the firm, FINRA believes that such questions can be best resolved through its interpretative letter process.

One commenter seeks confirmation that the proposal is not intended to require members to send account statements to other broker-dealers.[57] The commenter notes that NASD Rule 0120(g) defines the term "customer" to exclude a broker or dealer. The commenter seeks clarification because NASD Rule 0120(g) has not been adopted into the Consolidated FINRA Rulebook at this time. NASD Rule 2340 and NYSE 409 have not

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56 See Sutherland Asbill & Brennan Letter. See also Securities Exchange Act Release No. 56376 (September 7, 2007) ("Exemptive Order"). The Exemptive Order issued in conjunction with the approval of FINRA Rule 2330 provides that a broker-dealer will not be "deemed" to hold customer funds for purposes of SEA Rule 15c3-1 and SEA Rule 15c3-3 if, among other things, the transaction to which the check relates is subject to the registered principal requirement of the Rule and the broker-dealer promptly transmits the check after the principal's review has been completed.

57 See SIFMA Letter.

required firms to send account statements to other broker-dealers, and FINRA does not intend to broaden the scope of the rules.[58]

Another commenter expressed support of proposed Supplementary Material .05 (as renumbered in this Amendment No. 1) (Assets Externally Held and Included on Statements Solely as a Service to Customers), which adopts Incorporated NYSE Rule Interpretation 409(a)/04, as appropriately recognizing the responsibilities of member firms.[59]

VIII. Implementation Timeframe

Assuming the SEC approves the proposal, several commenters requested additional time to comply with the proposed requirements, particularly if the monthly delivery obligations remain as originally proposed.[60] FINRA appreciates these factors and notes that in response to commenters' concerns, it is proposing to exclude certain activities from the monthly account statement requirement. Such change should significantly reduce the potential costs and burdens on firms. Nonetheless, FINRA intends to give firms sufficient time to comply with new FINRA Rule 2231.
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

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58 See SR-FINRA-2008-021 (Proposed Rule Change Relating to the Adoption of NASD Rules 4000 through 10000 Series and the 12000 through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook) (discussing "Rules of General Applicability," including NASD Rule 0120); Securities Exchange Act Release No. 58176 (July 16, 2008); 73 FR 42844 (July 23, 2008).

59 See Sutherland Asbill & Brennan Letter.

60 See Sutherland Asbill & Brennan Letter, TIAA-CREF June Letter and SIFMA Letter.

Commission approval. The implementation date will be no later than 365 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[61] 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 on the proposed rule change were solicited by the Commission in response to the publication of SR-FINRA-2009-028.[62] The SEC received 12 comment letters. The comments are summarized above. FINRA is submitting its response to comments on the original filing contemporaneously with this Amendment No. 1.

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61 15 U.S.C. 78o-3(b)(6).

62 See Proposing Release.

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.[63]

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

Not applicable.

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 4. Text of the proposed rule change pursuant to this Amendment No. 1, marking changes from the originally filed proposed rule change, with the original language changes shown as if adopted and the new language marked to show additions and deletions.

Exhibit 5. Text of the proposed rule change.

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63 15 U.S.C. 78s(b)(2).

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 Amendment No. 1 and Response to Comments to 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" or "SEA")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 22, 2009, 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") and amended on ,[3] 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 this Amendment No. 1 to SR-FINRA-2009-028, 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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Amendment No. 1 to SR-FINRA-2009-028 responds to comments received on the original proposed rule change and proposes amendments to the original rule change pursuant to the comments.

Customers), except for paragraph (f),[4] and certain of its related interpretations. FINRA filed SR-FINRA-2009-028 with the Commission on April 22, 2009. On May 21, 2009, the Commission published the proposed rule change for comment in the Federal Register[5] and received 12 comment letters.[6] Based on the comments received, FINRA is filing this

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4 The SEC approved the deletion of Incorporated NYSE Rule 409(f) in connection with the adoption of FINRA Rule 2232 (Customer Confirmations). See Securities Exchange Act Release No. 63150 (October 21, 2010); 75 FR 66173 (October 27, 2010) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and To Delete NASD Rule 2230, NASD IM- 2110-6 and Incorporated NYSE Rule 409(f)). The rule change became effective on June 17, 2011. See Regulatory Notice 10-62 (December 2010).

5 See Securities Exchange Act Release No. 59921 (May 19, 2009), 75 FR 23912 (May 21, 2009) ("Proposing Release"). The comment period closed on June 11, 2009.

6 Letter from Gene Woodham, Chief Operating Officer, Sterne Agee Group, Inc., dated June 9, 2009 ("Sterne Agee Letter"); letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated June 10, 2009 ("ICI Letter"); letter from Jesse Hill, Director of Regulatory Services, Edward Jones, dated June 10, 2009 ("Edward Jones Letter"); letter from Dale E. Brown, President & CEO, Financial Services Institute, Inc., dated June 11, 2009 ("FSI Letter"); letter from Sean C. Davy, Managing Director, Corporate Credit Markets Division, Securities Industry and Financial Markets Association (SIFMA), New York, New York, dated June 11, 2009 ("SIFMA Letter"); letter from David J. Pearlman, Chair, Regulatory Affairs Committee, College Savings Foundation, dated June 11, 2009 ("College Savings Foundation Letter"); letter from John S. Markle, Deputy General Counsel, Regulatory Operations, TD AMERITRADE Holding Corporation, dated June 11, 2009 ("TD Ameritrade Letter"); letter from Bari Havlik, Chief Compliance Officer, Senior Vice President, Charles Schwab & Co., Inc., dated June 11, 2009 ("Schwab Letter); letter from John Muschalek, Managing Director, Clearing Services Division, First Southwest Company, dated June 11, 2009 ("First Southwest Company Letter"); letter from Jonathan Feigelson, SVP, General Counsel, TIAA-CREF, New York, New York, dated June 11, 2009 ("TIAA-CREF June Letter"); letter from Sutherland Asbill & Brennan LLP on behalf of the Committee of Annuity Insurers, dated June 11, 2009 ("Sutherland Asbill & Brennan Letter"); and letter from Jonathan Feigelson, SVP, General Counsel, TIAA-CREF, New York, New York, dated June 13, 2009 ("TIAA-CREF July Letter").

Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate. FINRA requests that the Commission publish Amendment No. 1 in the Federal Register to allow interested parties the ability to comment on changes made to the proposal in light of comments.

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

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"),[7] FINRA is proposing to adopt NASD Rule 2340 (Customer Account

[7] 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).

Statements) as FINRA Rule 2231 in the Consolidated FINRA Rulebook with moderate changes. The proposed rule change would delete: (1) Incorporated NYSE Rule 409 (Statements of Accounts of Customers), except for paragraph (f);[8] and (2) Incorporated NYSE Rule Interpretations 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 Incorporated NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

Rule Filing History

On April 22, 2009, FINRA filed with the Commission SR-FINRA-2009-028, a proposed rule change to adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook. The proposed rule change would require each general securities member to send account statements at least once each calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer, subject to certain new exceptions proposed in this Amendment No. 1; 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. The proposed rule change would also continue the exception (subject to specified conditions) for customer accounts carried solely for the purpose of execution on a delivery versus payment/receive versus payment (DVP/RVP) basis.

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8 See supra note 4.

On May 21, 2009, the SEC published the proposed rule change for comment in the Federal Register[9] and received 12 comment letters.[10] Based on the comments received, FINRA is filing this Amendment No. 1 to respond to the comments received and to propose amendments, where appropriate.

FINRA requests that the Commission publish Amendment No. 1 in the Federal Register to allow interested parties the ability to comment on changes made to the proposal in light of comments.

Proposed Changes in Amendment No. 1

In light of the comments, FINRA is proposing to exclude certain account activities from the proposed monthly account statement delivery requirement by adding new paragraph (c) to proposed FINRA Rule 2231. Proposed paragraph (c) of FINRA Rule 2231 would expressly exclude certain account activities from the monthly account statement delivery requirement. These activities would continue to require delivery of quarterly account statements, subject to new proposed Supplementary Material .01 (Compliance with SEA Rule 10b-10) that provides a general reminder that members remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of Transactions) that a member may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and FINRA Rule 2231 is not intended to alter any such conditions or requirements. FINRA also is proposing to amend proposed Supplementary Material .02

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9 See supra note 5.

10 See supra note 6.

(Transmission of Customer Account Statements to Other Persons or Entities)[11] to: (1) clarify that members are not required to obtain prior written consent to send duplicate account statements or other communications for accounts of associated persons of another member to such other member in complying with NASD Rule 3050 and Incorporated NYSE Rule 407;[12] (2) clarify (consistent with any SEC release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that have established the policy that customers should continue to receive periodic account statements when not receiving immediate trade confirmations under SEA Rule 10b-10) that members must continue to deliver customer account statements to customers as provided in the proposed rule even when directed by the customer in writing to send duplicates to a third party;[13] and (3) delete the term "confirmation," from the proposed rule text as delivery requirements for confirmations are governed by SEA Rule 10b-10 and FINRA Rule 2232.[14]

Comments to the Proposed Rule Change

The commenters express general support for the proposed rule change, but have concerns with certain aspects of the proposed rule. Most commenters believe the

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11 FINRA is proposing to add new Supplementary Material .01 (Compliance with SEA Rule 10b-10) as part of this Amendment No. 1 and has therefore renumbered the other proposed Supplementary Material items.

12 FINRA is proposing to adopt FINRA Rule 3210 (Personal Securities Transactions for or by Associated Persons), which combines and streamlines certain provisions of NASD Rule 3050 and Incorporated NYSE Rule 407. See Regulatory Notice 09-22 (April 2009).

13 See Securities Exchange Act Release No. 34962 (November 10, 1994); 59 FR 59612 (November 17, 1994) (Confirmation of Transactions).

14 See supra note 4.

proposal is too broad. Specifically, most of the comments focus on the following two issues: (1) the proposal to change the delivery requirement for customer account statements from quarterly to monthly; and (2) the proposal's potential conflict with SEA Rule 10b-10 and related guidance. Commenters also raised concerns regarding the general utility of customer account statements, potential environmental impact, availability of alternatives, need for written customer consent to transmit customer account statements to third parties, clarification of provisions requiring display of the identity of clearing firms and other issues. In addition, several commenters requested sufficient time to comply with the proposal if it is approved. FINRA discusses its responses to these comments below.

I. General

Three commenters questioned the value of customer account statements generally and stated that the significance of customer account statements has diminished in recent years.[15] Several commenters argue that customer account statements are outdated the day after they are generated and customers now routinely use other up-to-date mediums to review current account activities such as on-line account access, automated phone systems and call centers.[16] In addition, several commenters expressed concern that customer account statements are less effective at helping customers' spot errors, identify theft or other potential problems than these more timely alternatives.[17] One commenter urged FINRA to encourage firms to include disclosure on customer account statements

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15 See SIFMA Letter, TIAA-CREF June Letter and Schwab Letter.

16 See TD Ameritrade Letter, TIAA-CREF June Letter and First Southwest Company Letter.

17 See FSI Letter, TIAA-CREF June Letter and First Southwest Company Letter.

apprising customers of available alternatives for obtaining the most current information.[18] FINRA, however, disagrees with the notion that customer account statements have little or limited utility. FINRA believes that customer account statements continue to serve a significant regulatory purpose and that customers benefit from the receipt of periodic customer account statements.

Several commenters also raised concerns regarding the environmental impact of the proposal.[19] One commenter estimates the proposal will generate 60 million additional pages each year. The commenter estimates that this would be the equivalent of 7200 trees or 300 tons of paper annually – almost a half of it destined for landfills.[20] While FINRA is mindful of the potential impact of its rulemaking on the environment and related burdens on its members, FINRA believes customer account statements serve a significant purpose in protecting customers and enhancing the overall integrity of the securities market. Moreover, consistent with current guidance, FINRA is proposing to adopt Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations) which allows a firm to provide electronic delivery of customer statements upon affirmative consent of the customer.[21]

II. Proposed Monthly Account Statement Delivery Requirement

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18 See TIAA-CREF June Letter.

19 See TIAA-CREF June Letter and First Southwest Company Letter.

20 See TIAA-CREF June Letter.

21 SEC guidance to date on the use of electronic media continues to require the affirmative consent of the investor/customer, and FINRA believes such consent should be required for electronic delivery of customer account statements. See Notice to Members 98-3 (January 1998). See also Securities Exchange Act Release No. 42728 (April 28, 2000); 65 FR 25843 (May 4, 2000).

1. Monthly Delivery is Not Industry Standard

As set forth in the Proposing Release, paragraph (a) of the proposed rule would impose a new requirement that each general securities member firm send a customer account statement not less than once every calendar month to each customer whose account had account activity during the period since the last statement, and continue to require that such firms send customer account statements 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 statement. All 12 commenters objected to the scope of the proposed monthly delivery requirement.[22]

Several commenters state that current industry practice continues to be providing customers with account statements on a quarterly-basis, not monthly.[23] They contend that FINRA offers little support for the statement that requiring monthly account statements for customer accounts with account activity "better reflects current industry practice."[24] Another commenter notes that quarterly reporting is the retirement plan industry legal standard and monthly reporting would be at odds with other rules governing the retirement plan industry, including laws enacted by Congress.[25]

Another commenter notes that although a majority of its customers already receive monthly account statements, some customers have expressed a desire to receive

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22 See supra note 6.

23 See TIAA-CREF July Letter, SIFMA Letter, TD Ameritrade Letter, FSI Letter and Schwab Letter and Sutherland Asbill & Brennan Letter.

24 Id.

25 See TIAA-CREF June Letter.

them quarterly and mandatory monthly delivery would be costly.[26] Several commenters project that the cost to comply with the new requirement, *e.g.*, to produce, print, stuff and mail additional statements, plus train personnel, would be in the millions.[27] One commenter argues that "[s]caling up the member's compliance systems, training programs, personnel, policies and procedures, and acquiring the resources necessary for such an undertaking, would impose immense administrative costs and burdens on these firms, and ultimately result in the imposition of increased costs on customers."[28] Commenters state that the practical benefits received by investors from monthly statements versus quarterly statements are substantially disproportionate to the inherent cost under a cost benefit analysis.[29]

One commenter further contends that the proposed move to monthly account statement delivery requirements contradicts the 2008 Rand Study and recent efforts by the SEC to streamline disclosures to investors to make them more user-friendly and readable.[30] Another commenter suggests that customers should be permitted to

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26 See Schwab Letter.

27 TD Ameritrade estimates the new requirement will increase costs by $4 - $7 million annually and by tens of millions or more across the industry. TIAA-CREF estimates that the move to monthly statements will cost an additional $16 million in printing and postage expenses per year, which would be passed on to customers. Edward Jones estimates the cost of monthly account statements in 2009 would have been $1.5 million.

28 See Sutherland Asbill & Brennan LLP Letter.

29 See Sterne Agee Letter, ICI Letter, Edward Jones Letter, FSI Letter, SIFMA Letter, TD Ameritrade Letter, Schwab Letter, First Southwest Company Letter, TIAA-CREF June Letter, Sutherland Asbill & Brennan Letter and TIAA-CREF July Letter.

30 See FSI Letter.

affirmatively elect quarterly delivery of customer account statements with the right to revert to monthly delivery anytime they choose.[31] Another commenter recommends that firms be able to condition the customer's right to receive monthly statements upon consent to electronic delivery.[32]

In light of the comments, FINRA is proposing to exclude certain account activities from the proposed monthly account statement delivery requirement. FINRA believes the proposed exclusions (outlined in detail below) strike the correct balance between investor protection and the concerns raised by the commenters.

2. Monthly Delivery is Inconsistent with SEA Section 15A

One commenter asserts that the monthly statement requirement is inconsistent with the statutory requirements of Sections 6 and 15A of the SEA and therefore the proposal should not be approved by the SEC. [33] The commenter contends that FINRA's statement on burden on competition in the rule filing is cursory and falls short of satisfying the instructions in Form 19b-4 to provide detailed and specific statements.

FINRA has complied with all rulemaking obligations imposed by the SEA. As required under Section 19(b)(1) of the SEA, FINRA submitted to the SEC a concise general statement of the basis and purpose of the proposed rule. As stated in its rule filing, 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

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31 See Schwab Letter.

32 See TIAA-CREF June Letter.

33 See TIAA-CREF July Letter. FINRA notes that is not a "national securities exchange" and therefore is not subject to the requirements of Section 6 of the SEA.

timely manner, while also clarifying and streamlining the customer account rules for adoption as FINRA rules in the Consolidated FINRA Rulebook. In addition, as also stated in the rule filing, the proposed rule change does not create "a burden on competition not necessary or appropriate in furtherance of the purposes of [the SEA]."[34] Further, FINRA tailors its proposed rule changes as narrowly as possible to achieve the intended and necessary regulatory benefit. In this regard, FINRA notes that, as further detailed below, in response to commenters' concerns, it is proposing to exclude certain account activities from the proposed monthly account statement delivery requirement.

3. Monthly Delivery Creates Potential Conflict with SEA Rule 10b-10

All commenters contend that the adoption of a monthly delivery requirement for customer account statements would cause the proposed rule change to conflict with SEA Rule 10b-10 (Confirmation of Transactions) and its related interpretations and guidance.[35]

Several commenters note that SEA Rule 10b-10 generally requires that at, or before, the completion of a securities transaction for a customer, a broker-dealer must deliver to the customer written notification (a "confirmation") that contains certain prescribed information about the transaction.[36] Commenters assert that the more immediate nature of transaction confirmations makes them a very effective tool for

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34 See 15 U.S.C. 78o-3(b)(9).

35 See supra note 6.

36 See Schwab Letter and SIFMA Letter.

customers for identifying discrepancies in a customer's account related to erroneous transactions, identity theft, or other potential problems.[37]

All commenters also emphasize that the Commission, through SEA Rule 10b-10(b), rule interpretations, no-action guidance and exemptive relief, has considered the disclosures appropriate for certain types of transactions, balanced risks to investor protection against cost savings for broker-dealers, and determined that it is unnecessary for broker-dealers to send confirmations of certain transactions if certain information regarding the transactions is disclosed in a quarterly statement.[38] The commenters state that these transactions include, but are not limited to, transactions effected pursuant to a "periodic plan" or "investment company plan," the automatic reinvestment of dividends in the shares of money market funds, other open-end investment companies and unit investment trusts and transactions in certain sorts of "wrap fee" or "payroll deduction" arrangements.[39]

In light of the comments, as further detailed below, FINRA is proposing to add new paragraph (c) to exclude certain account activities from the proposed monthly account statement delivery requirement.[40]

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37 See Sutherland Asbill & Brennan Letter.

38 See supra note 6.

39 See SIFMA Letter.

40 In proposing the exceptions in new paragraph (c), FINRA reminds firms that they remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that a firm may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and proposed FINRA Rule 2231 is not intended to alter any such conditions or requirements. See proposed FINRA Rule 2231.01.

4. Monthly Delivery Creates Potential Conflict with ERISA and Rules Relating to Retirement Plans and MSRB Rules Relating to 529 College Savings Plans

Two commenters are concerned that the proposed monthly delivery requirement for customer account statements will conflict with current quarterly reporting standards in the retirement plan industry.[41] The commenters note that multiple service providers, including broker-dealers, banks and trust companies, offer services to retirement plan participants. These parties are subject to SEA Rule 10b-10, Section 105 of the Employee Retirement Income Securities Act of 1974, as amended ("ERISA"), and applicable banking regulations. The commenters state that these various regulations recognize quarterly statements and changing the requirement for broker-dealers would add confusion and place broker-dealers at a competitive disadvantage with few, if any, benefits.

Similarly, another commenter is concerned that the proposed monthly delivery requirement is at odds with Rule G-15 of the Municipal Securities Rulemaking Board ("MSRB"), which permits that confirmation of transaction in college savings plan transactions may be done on a quarterly basis provided that they are part of a regular investment program meeting the definition of "periodic municipal fund security plan" under the applicable MSRB Rules.[42] The commenter states the proposed rule would create an anomaly because a broker-dealer would be required to provide a monthly statement under FINRA Rules, but would be permitted under MSRB Rules to provide a quarterly statement. Moreover, they argue that such periodic activity does not seem to be

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41 See TIAA-CREF June Letter and ICI Letter.

42 See College Savings Foundation Letter.

the sort that would lend itself to account security issues and/or identity theft concerns. FINRA notes that nothing in this rule proposal is intended to alter the balance of jurisdiction between FINRA and the MSRB and the continued application of MSRB Rules to municipal fund securities. Further, FINRA believes that proposed paragraph (c) that establishes exceptions from the proposed monthly delivery requirement would generally make the proposed rule consistent with the frequency of delivery requirements in MSRB Rule G-15.[43]

5. Carve-Outs from Monthly Delivery Recommended by Commenters

Several commenters recommend that FINRA should permit quarterly account reporting where the only activity in the customer's account consists of (A) certain types of routine activity that does not involve the active participation of the customer ("Passive Activity"); (B) activity that the Commission has determined need only be reported on quarterly account statements rather than in Rule 10b-10 transaction confirmations ("10b-10 Exempt Activity"); and (C) occasional transactions in retirement accounts for which an immediate confirmation is sent to the customer when the predominant activities in such account are either Passive Activity or 10b-10 Exempt Activity.[44] In addition, one commenter notes that similar activity with respect to ERISA plans should be exempted as

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43 See MSRB Rule G-15(a) (Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers), which provides in relevant part that "such broker, dealer or municipal securities dealer gives or sends to such customer within five business days after the end of each quarterly period, in the case of a customer participating in a periodic municipal fund security plan, or each monthly period, in the case of a customer participating in a non-periodic municipal fund security program, a written statement disclosing . . . ."

44 See SIFMA Letter, FSI Letter, Sutherland Asbill & Brennan Letter and TIAA-CREF June Letter.

well from the monthly delivery requirements.[45] The commenters note that the activities described above are generally routine and recurring activities in a customer's account that are better suited to quarterly reporting. In addition, they state that these routine and regular activities in a customer's account are of the type that typically do not raise fraud and/or identity theft concerns.[46]

6. FINRA Response to Monthly Delivery Comments

In response to the comments raised, FINRA is proposing to add new paragraph (c) to proposed FINRA Rule 2231. Proposed paragraph (c) would expressly exclude certain account activities from the monthly account statement delivery requirement. These activities would continue to require delivery of quarterly account statements, subject to new proposed Supplementary Material .01 (Compliance with SEA Rule 10b-10) that provides a general reminder that members remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of Transactions) that a member may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and FINRA Rule 2231 is not intended to alter any such conditions or requirements.

Specifically, subject to proposed Supplementary Material .01, a member could send quarterly account statements to customers instead of monthly account statements pursuant to paragraph (a) of the proposed rule if:

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45 See TIAA-CREF June Letter.

46 See supra note 44.

(1) The member relies on an appropriate rule, regulation, release, interpretation, "no-action" position or exemption issued by the SEC or its staff that (A) specifically applies to the fact situation of the activity; (B) provides relief from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (C) permits quarterly delivery of customer account statements; or

(2) The activity to the account consists only of the kind listed below:

(A) the receipt of funds in the account that are not directly from a purchase or sale transaction, including the receipt of interest and dividends;

(B) the automatic reinvestment of funds in the account pursuant to and in accordance with a customer's standing instructions (*e.g.*, a dividend reinvestment plan);

(C) the transfer of uninvested customer credit balances into or out of money market mutual funds or bank deposits pursuant to a "sweep program" pursuant to consent of the customer and implemented consistent with applicable regulatory guidance, except where the customer's balance in the bank deposit "sweep program" during the period exceeds the amount insured by the FDIC coverage;

(D) all fees and charges to the account that have been fully disclosed to the customer and comply with all disclosure and applicable regulatory requirements (*e.g.*, account fees, short position charges, interest on debit balances or charges for dividends on securities held short in the account).

(3) A member may rely on an exclusion under this paragraph (c) only if customers are provided access to current information on their accounts via the Internet and by telephone.

FINRA believes the proposed exclusions for these types of account activities are appropriate as they strike the correct balance between investor protection and the concerns raised by the commenters.

III. Proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons or Entities)

Proposed Supplementary Material .02 would require written instructions from the customer to address and/or send customer statements or other communications relating to the customer's account to other persons or entities. One commenter contends that this requirement would conflict with Incorporated NYSE Rule 407 and NASD Rule 3050.[47] As further detailed therein, these rules generally address the obligation of a member carrying an account in which an associated person of another member has an interest to send duplicate confirmations and accounts statements to such other member. The commenter seeks clarification that members are not required to obtain the written consent of the customer before sending duplicate statements, confirmations or other communications pursuant to NYSE Rule 407 or NASD Rule 3050. FINRA agrees that compliance with such rules should not be deemed a violation of this provision and is proposing to revise the proposed rule text to make this clear.

Two commenters assert that the proposed rule should allow a customer's oral consent to be sufficient to send a duplicate account statement, confirmation, or other communication, provided that the customer also receives such account statement,

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47 See SIFMA Letter. See also supra note 12.

confirmation or other communication and the member relying on such oral consent lists on the customer's (quarterly or monthly) account statement the names of any other persons to whom duplicate communications are being sent.[48] One of these commenters notes that firms are permitted to accept oral instructions for a variety of customer transactions and contends that customers should be afforded the same level of convenience in this regard so long as the firm has adequate controls in place.[49] FINRA does not believe that oral instructions are sufficient in this context. Due to several concerns (*e.g.*, identify theft, privacy concerns, etc.), FINRA believes firms must be able to document and record customer consent to send customer account statements to third-parties. FINRA has permitted firms to act on oral instructions from customers in other contexts (*e.g.*, trading instructions) largely to allow customer and firms to act expeditiously to execute securities transactions that are time-sensitive in nature. However, the delivery of customer account statements presents no such concerns and therefore should require written customer consent.

Accordingly, in response to comments, FINRA is proposing to amend proposed Supplementary Material .02 to: (1) clarify that members are not required to obtain prior written consent to send duplicate account statements or other communications for accounts of associated persons of another member to such other member in complying with NASD Rule 3050 and Incorporated NYSE Rule 407; (2) clarify (consistent with any SEC release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 that have established the policy that customers

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48 See SIFMA Letter and Schwab Letter.

49 See Schwab Letter.

should continue to receive periodic account statements when not receiving immediate trade confirmations under SEA Rule 10b-10) that members must continue to deliver customer account statements to customers as provided in the proposed Rule even when directed by the customer in writing to send duplicates to a third party;[50] and (3) delete the term "confirmation," from the proposed rule text as delivery requirements for confirmations are governed by SEA Rule 10b-10 and FINRA Rule 2232.[51]

IV. Proposed Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations)

One commenter urges FINRA to adopt electronic delivery of customer account statements as the default delivery mechanism.[52] The commenter argues that electronic delivery provides more timely information to customers and a cost savings to firms. However, another commenter is concerned that requiring individual customers to affirmatively opt for electronic delivery will act to negate these benefits, but notes that further use of electronic delivery methods raises larger issues that FINRA should consider on a more global basis, rather than solely in the context of periodic customer account statements.[53] FINRA believes that proposed Supplementary Material .03 is consistent with current SEC guidance on the use of electronic media which, among other things, requires affirmative consent of the customer for electronic delivery of certain documents.[54]

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50 See supra note 13.

51 See supra note 4.

52 See TIAA-CREF June Letter.

53 See Sutherland Asbill & Brennan Letter.

54 See supra note 21.

V. Proposed Supplementary Material .04 (Information to be Disclosed on Statement)

One commenter seeks clarification of the requirements in paragraphs (a) and (b) and contends that the requirements are in conflict.[55] Proposed paragraph (a) requires disclosure of the identity of the introducing firm and the clearing firm, if different, and their respective contact information on the front of the statement, but allows the identity and contact information of the clearing firm to be appear on the back of the statement so long as it is bold and prominent. Proposed paragraph (b) requires that the front of the statement must clearly disclose that the clearing firm is a member of SIPC. FINRA believes the two provisions are not inconsistent. Proposed paragraph (a) gives firms the option to provide the identity and contact information of the clearing firm on the back of the statement if the firm chooses; it does not require such placement. Proposed paragraph (b) simply requires SIPC disclosure, which can be accomplished either by a general statement or by identifying the clearing firm by name. FINRA believes these provisions allow firms some flexibility in providing this information, while also ensuring that the SIPC status of the clearing firm is disclosed on the front of the statement.

VI. Proposed Supplementary Material .07 (Use of Summary Statements)

One commenter objects to proposed Supplementary Material .07 (as renumbered in this Amendment No. 1) on the Use of Summary Statements.[56] The supplementary material would require, among other things, 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." The

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55 See SIFMA Letter.

56 See TIAA-CREF June Letter.

commenter asks FINRA to "clarify that the use of prominent disclosure within summary statements that aggregate accounts held or serviced by multiple parties is adequate to satisfy, or may be used in lieu of, [the above set forth requirement]." FINRA believes the term "other distinct form of demarcation," provides firms the flexibility to format summary statements. Firms are not required to place separate statements on separate pages, but are required to format the statements in such a manner as to make them distinguishable on their face. The use of prominent disclosure with footnotes or other distinct forms of demarcation can be sufficient so long as accounts held or serviced by multiple parties are clearly distinguishable. FINRA believes these guidelines are beneficial because they establish standards to provide clarity and reduce confusion to customers when receiving summary statements.

VII. Miscellaneous Comments

One commenter seeks clarification on what constitutes a "general securities business" for purposes of triggering the customer account statement delivery requirement.[57] They argue that a firm that has multiple business lines which include varied brokerage and securities products and services may carry customer accounts or receive or hold customer funds or securities in connection with one business line or product or service but not another. They seek clarification that the rule will apply only to those portions of a firm's business which triggers the classification – not all lines or services. Another commenter requests clarification that a "general securities member" does not include members that are relying on an SEC Exemptive Order relating to FINRA Rule 2330 (formerly NASD Rule 2821), which established sales practice

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57 Id.

standards regarding recommended purchases and exchanges of deferred variable annuities.[58]

In defining the term "general securities member," current NASD Rule 2340 and proposed FINRA Rule 2231 provide that a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this rule. FINRA notes that the proposed rule change does not amend the current definition of "general securities member" as set forth in NASD Rule 2340 and nothing in this proposal is intended to alter the obligations between clearing firms and introducing firms. If the commenter or others have concerns about the application of the rule in particular situations based on the structure of the firm, FINRA believes that such questions can be best resolved through its interpretative letter process.

One commenter seeks confirmation that the proposal is not intended to require members to send account statements to other broker-dealers.[59] The commenter notes that NASD Rule 0120(g) defines the term "customer" to exclude a broker or dealer. The commenter seeks clarification because NASD Rule 0120(g) has not been adopted into the Consolidated FINRA Rulebook at this time. NASD Rule 2340 and NYSE 409 have not

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58 See Sutherland Asbill & Brennan Letter. See also Securities Exchange Act Release No. 56376 (September 7, 2007) ("Exemptive Order"). The Exemptive Order issued in conjunction with the approval of FINRA Rule 2330 provides that a broker-dealer will not be "deemed" to hold customer funds for purposes of SEA Rule 15c3-1 and SEA Rule 15c3-3 if, among other things, the transaction to which the check relates is subject to the registered principal requirement of the Rule and the broker-dealer promptly transmits the check after the principal's review has been completed.

59 See SIFMA Letter.

required firms to send account statements to other broker-dealers, and FINRA does not intend to broaden the scope of the rules.[60]

Another commenter expressed support of proposed Supplementary Material .05 (as renumbered in this Amendment No. 1) (Assets Externally Held and Included on Statements Solely as a Service to Customers), which adopts Incorporated NYSE Rule Interpretation 409(a)/04, as appropriately recognizing the responsibilities of member firms.[61]

VIII. Implementation Timeframe

Assuming the SEC approves the proposal, several commenters requested additional time to comply with the proposed requirements, particularly if the monthly delivery obligations remain as originally proposed.[62] FINRA appreciates these factors and notes that in response to commenters' concerns, it is proposing to exclude certain activities from the monthly account statement requirement. Such change should significantly reduce the potential costs and burdens on firms. Nonetheless, FINRA intends to give firms sufficient time to comply with new FINRA Rule 2231.

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

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60 See SR-FINRA-2008-021 (Proposed Rule Change Relating to the Adoption of NASD Rules 4000 through 10000 Series and the 12000 through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook) (discussing "Rules of General Applicability," including NASD Rule 0120); Securities Exchange Act Release No. 58176 (July 16, 2008); 73 FR 42844 (July 23, 2008).

61 See Sutherland Asbill & Brennan Letter.

62 See Sutherland Asbill & Brennan Letter, TIAA-CREF June Letter and SIFMA Letter.

Commission approval. The implementation date will be no later than 365 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,[63] 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 on the proposed rule change were solicited by the Commission in response to the publication of SR-FINRA-2009-028.[64] The SEC received 12 comment letters. The comments are summarized above. FINRA is submitting its response to comments on the original filing contemporaneously with this Amendment No. 1.

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63 15 U.S.C. 78o-3(b)(6).

64 See Proposing Release.

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 Elizabeth M. Murphy, 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 Website (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 website viewing and printing 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.[65]

Elizabeth M. Murphy

Secretary

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65 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 1, with the proposed changes in the original filing shown as if adopted. Proposed additions in this Partial Amendment No. 1 appear underlined; proposed deletions appear in brackets.

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2230. Customer Account Statements and Confirmations

2231. Customer Account Statements

(a) General

Except as otherwise provided by paragraphs (b) and (c), each general securities member shall 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 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

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 SEA 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 SEA Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

(c) Exclusions from Monthly Account Statement Delivery Requirement

Subject to Supplementary Material .01, quarterly account statements may be sent to customers instead of monthly account statements pursuant to paragraph (a) of this Rule if:

(1) The member relies on an appropriate rule, regulation, release, interpretation, "no-action" position or exemption issued by the SEC or its staff that (A) specifically applies to the fact situation of the activity; (B) provides relief from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (C) permits quarterly delivery of customer account statements; or

(2) The activity to the account consists only of the kind listed below:

(A) the receipt of funds in the account that are not directly from a purchase or sale transaction, including the receipt of interest and dividends;

(B) the automatic reinvestment of funds in the account pursuant to and in accordance with a customer's standing instructions (*e.g.*, a dividend reinvestment plan);

(C) the transfer of uninvested customer credit balances into or out of money market mutual funds or bank deposits pursuant to a "sweep program" pursuant to consent of the customer and implemented consistent with applicable regulatory guidance, except where the customer's balance

in the bank deposit "sweep program" during the period exceeds the amount insured by the FDIC coverage;

(D) all fees and charges to the account that have been fully disclosed to the customer and comply with all disclosure and applicable regulatory requirements (*e.g.*, account fees, short position charges, interest on debit balances or charges for dividends on securities held short in the account).

(3) A member may rely on an exclusion under this paragraph (c) only if customers are provided access to current information on their accounts via the Internet and by telephone.

[(c)](d) 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 [(c)](d)(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 [(c)](d)(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 [(c)](d)(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)]<u>(e)</u> 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 SEA 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 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] <u>2310</u> (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)]<u>(f)</u> Exemptions

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

<u>• • • Supplementary Material: ----------</u>

<u>.01 Compliance with SEA Rule 10b-10.</u> <u>FINRA reminds members that they remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of Transactions) that a member may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and FINRA Rule 2231 is not intended to alter any such conditions or requirements.</u>

.0<u>2</u>[1] Transmission of Customer Account Statements to Other Persons or Entities. <u>Except as required to comply with NASD Rule 3050 and Incorporated NYSE Rule 407, a</u> [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 (a) the customer has provided written instructions to the member to send such [confirmations,] statements or communications to such person or entity; and (b) the member continues to send such statements or communications, monthly or quarterly as applicable in accordance with this Rule, directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 below.

.03[2] 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.

.04[3] 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.

.05[4] 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.

.06[5] 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.

.07[6] 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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EXHIBIT 5

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

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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)

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2230. Customer Account Statements and Confirmations

[2340]2231. Customer Account Statements

(a) General

Except as otherwise provided by paragraphs (b) and (c), 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 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) Exclusions from Monthly Account Statement Delivery Requirement

Subject to Supplementary Material .01, quarterly account statements may be sent to customers instead of monthly account statements pursuant to paragraph (a) of this Rule if:

(1) The member relies on an appropriate rule, regulation, release, interpretation, "no-action" position or exemption issued by the SEC or its staff that (A) specifically applies to the fact situation of the activity; (B) provides relief from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (C) permits quarterly delivery of customer account statements; or

(2) The activity to the account consists only of the kind listed below:

(A) the receipt of funds in the account that are not directly from a purchase or sale transaction, including the receipt of interest and dividends;

(B) the automatic reinvestment of funds in the account pursuant to and in accordance with a customer's standing instructions (*e.g.*, a dividend reinvestment plan);

(C) the transfer of uninvested customer credit balances into or out of money market mutual funds or bank deposits pursuant to a "sweep program" pursuant to consent of the customer and implemented consistent with applicable regulatory guidance, except where the customer's balance in the bank deposit "sweep program" during the period exceeds the amount insured by the FDIC coverage;

(D) all fees and charges to the account that have been fully disclosed to the customer and comply with all disclosure and applicable regulatory requirements (*e.g.*, account fees, short position charges, interest on debit balances or charges for dividends on securities held short in the account).

(3) A member may rely on an exclusion under this paragraph (c) only if customers are provided access to current information on their accounts via the Internet and by telephone.

[(c)](d) 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)](d)(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)](d)(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)](d)(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)]<u>(e)</u> 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]<u>A</u> 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] <u>Rule</u>.

(3) "direct participation program" or "direct participation program security" refers to the publicly issued equity securities of a direct participation program as defined in Rule [2810] <u>2310</u> (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)](f) 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 Compliance with SEA Rule 10b-10. FINRA reminds members that they remain subject to any conditions or requirements specified in any release, interpretation, "no-action" position or exemption issued by the SEC or its staff in the context of SEA Rule 10b-10 (Confirmation of Transactions) that a member may rely on for relief from certain delivery obligations of trade confirmations as specified in such rule (*e.g.*, the manner and frequency of delivering periodic account statements in lieu of immediate trade confirmations) and FINRA Rule 2231 is not intended to alter any such conditions or requirements.

.02 Transmission of Customer Account Statements to Other Persons or Entities. Except as required to comply with NASD Rule 3050 and Incorporated NYSE Rule 407, a [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 (a) the customer has provided written instructions to the member to send such [confirmations,] statements or communications to such person or entity; and (b) the member continues to send such statements or communications, monthly or quarterly as applicable in accordance with this Rule, directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 below.

.03 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.

.04 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.

.05 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.

.06 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.

.07 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.

* * * * *

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

* * * * *

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) Reserved.[1]

(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: ----------

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[1] Paragraph (f) of NYSE Rule 409 was deleted from the Consolidated FINRA Rulebook with the approval of Rule FINRA 2232. See Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (Order Approving File No. SR-FINRA-2009-058).

.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 supervisor of a member organization, 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.]

* * * * *

NYSE Rule Interpretation

* * * * *

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 service[1];]

[[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.]

[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 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 combing 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]]

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

[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 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.]

* * * * *

Exhibit 2c

OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 2

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2009 - * 028
Amendment No. (req. for Amendments *)

Proposed Rule Change by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal
☑	☐	☑

Caution: You are withdrawing this filing

Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☑	☐	☐

Rule

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

19b-4(f)(1)	19b-4(f)(2)	19b-4(f)(3)	19b-4(f)(4)	19b-4(f)(5)	19b-4(f)(6)
☐	☐	☐	☐	☐	☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters, required when Initial is checked *).

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 * Kosha Last Name * Dalal

Title * Associate Vice President and Associate General Counsel

E-mail * kosha.dalal@finra.org

Telephone * (202) 728-6903 Fax (202) 728-8264

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 07/30/2012

By Patrice Gliniecki (Name *)

Senior Vice President and Deputy General Counsel (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.

Patrice Gliniecki,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information (required) Add Remove View	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 (required) Add Remove View	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 Add Remove View 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 Add Remove View 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 Add Remove View	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 Add Remove View	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 Add Remove View	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.

Exhibit 2d

Regulatory Notice 14-35

Customer Account Statements

FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)

Comment Period Expires: October 31, 2014

September 2014

Notice Type
- Request for Comment
- Consolidated Rulebook

Suggested Routing
- Compliance
- Legal
- Operations
- Risk
- Senior Management

Key Topics
- Customer Account Statements

Referenced Rules & Notices
- FINRA Rule 3150
- FINRA Rule 4311
- NASD Rule 2340
- NASD Rule 3050
- NYSE Rule 409 and its Interpretations
- NYSE Rule 407
- SEA Rule 10b-10

Executive Summary

FINRA seeks comment on a revised proposal to transfer, largely unchanged, current NASD Rule 2340 (Customer Account Statements) and Incorporated NYSE Rule 409 (Statements of Accounts of Customers)[1] into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements). The revised proposal includes changes made in response to comments on the prior proposal that was subsequently withdrawn. The key changes in the revised proposal from the prior proposal are to (1) maintain the quarterly delivery requirement in the current rule; and (2) allow customers to direct the transmission of customer account statements and other documents to third parties, provided the firm sends duplicates of such account statements and other documents directly to the customer.

The proposed rule is available as Attachment A at www.finra.org/notices/14-35.

Questions regarding this *Notice* should be directed to:

- Kris Dailey, Vice President, Risk Oversight & Operational Regulation (ROOR), at (646) 315-8434; or
- Kosha Dalal, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-6903.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by October 31, 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 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.[2]

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).[3]

Background & Discussion

Current NASD Rule 2340 (Customer Account Statements) generally requires each general securities member (as that term is defined in the rule)[4] and NYSE Rule 409 (Statements of Account of Customers) generally requires each member organization to send account statements to customers at least quarterly showing security and money positions during the preceding quarter.

A. Initial Filing

In April 2009, FINRA filed with the SEC a proposed rule change to adopt consolidated FINRA Rule 2231 (Customer Account Statements) that would have transferred NASD Rule 2340 and NYSE Rule 409 with significant changes into the FINRA Rulebook (the initial filing).[5] Among other changes, in the initial filing, FINRA proposed to replace the existing quarterly customer account statement delivery requirement with a requirement to send account statements at least once every calendar month to each customer whose account had activity during the period. The initial filing also proposed to incorporate existing supplementary material to NYSE Rule 409, including provisions allowing a firm to send customer account statements and other documents to third parties based on written instructions from the customer.

The SEC received 12 comment letters.[6] All commenters objected to the proposed monthly delivery requirement, generally stating that current industry practice continued to be providing customer account statements on a quarterly basis. Among other concerns, the commenters noted that the proposed monthly delivery requirement would result in significant compliance costs for the industry without meaningful benefits for customers, and could create conflicts with firms' obligations under SEA Rule 10b-10 (Confirmation of Transactions), as well as quarterly reporting standards in the retirement plan industry. SEC staff also expressed concern regarding the proposed provision allowing firms to transmit customer account statements and other documents to third parties based on written instructions from the customer.

In response to the comments, FINRA filed Amendment No. 1 to the proposed rule change in July 2011.[7] Among other changes, in Amendment No. 1, FINRA proposed to permit firms to send quarterly account statements in a range of circumstances.[8] FINRA also revised the proposal regarding transmission of customer account statements to third parties to require firms to continue to deliver duplicate copies of customer account statements to customers even when directed by customers in writing to send the statements to third parties.

The SEC published Amendment No. 1 for comment in August 2011 and received eight comment letters.[9] Commenters continued to raise concerns regarding the monthly delivery requirement, asserting that quarterly delivery of account statements should not be limited to select circumstances. In addition, commenters objected to the proposed requirement to deliver duplicate copies of account statements to customers even when directed by customers in writing to send the statements to third parties. Some commenters believed that there should be circumstances under which members should not be required to deliver duplicate statements to customers, particularly where there is a power of attorney or incapacity. In July 2012, FINRA withdrew the initial filing to further consider the comments.[10]

B. Revised Proposal

In light of the concerns with the initial filing, FINRA requests comment on a revised proposal that would largely transfer unchanged current NASD Rule 2340 (Customer Account Statements) and NYSE Rule 409 (Statements of Accounts of Customers) into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements).[11] The revised proposal would require each general securities member firm to send account statements at least once each calendar quarter to each customer whose account had activity during the period since the last statement was sent to the customer. The key changes in the revised proposal from the initial filing are to (1) maintain the quarterly delivery requirement in the current rule; and (2) allow customers to direct the transmission of customer account statements and other documents to third parties, provided the firm sends duplicates of such account statements and other documents directly to the customer.

1. Provisions Transferring Largely Unchanged

Proposed FINRA Rule 2231 would transfer, largely unchanged, the following requirements of NASD Rule 2340 and NYSE Rule 409:

- **Quarterly Delivery Requirement.** Proposed FINRA Rule 2231(a) would require each general securities member firm to send account statements to customers at least once each calendar quarter containing a description of any securities position, money balances or account activity in the accounts since the prior account statements were sent. The term "general securities member," would be transferred with minor technical changes from NASD Rule 2340(d).[12]
- **Requirement to Provide SIPA Disclosure.** Proposed FINRA Rule 2231(a) also would require customer account statements to include a statement advising customers to report promptly any inaccuracy or discrepancy in their account and to re-confirm any oral communications in writing to further protect the customer's rights under the Securities Investor Protection Act (SIPA).
- **Disclosure of Free Credit Balances.** Proposed FINRA Rule 2231(a) also would provide that the rule does not qualify or condition the obligations of firms to comply with SEA Rule 15c3-3(j)(1) related to free credit balances carried for the account of customers.
- **DVP/RVP Requirements.** Proposed FINRA Rule 2231(b) would provide that quarterly statements do not need to be sent to customer accounts carried solely for execution on a Delivery versus Payment/Receive versus Payment (DVP/RVP) basis, subject to specified conditions.

- **DPP/REIT Securities Requirements, Subject Pending Rule Filing.** Proposed FINRA Rule 2231(c) would address the inclusion of per share estimated values for DPP or REIT securities held in customer accounts or included on customer account statements, subject to a currently pending rule filing relating to the valuation of unlisted DPP and REIT securities.[13]
- **Definitions.** Proposed FINRA Rule 2231(d) would include the current definitions of "general securities member" and "account activity," among others.
- **Exemptive Authority.** Proposed FINRA Rule 2231(e) would allow FINRA to exempt firms from the provisions of the rule pursuant to the Rule 9600 Series.

2. **New Supplementary Material .02 –** Transmission of Customer Account Statements to Other Persons

Proposed Supplementary Material .02 would provide that, except as required to comply with NASD Rule 3050 (Transactions for or by Associated Persons) and NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange), a firm may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account unless (a) the customer has provided written instructions to the firm to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; and (b) the firm sends duplicates of such statements or other communications in accordance with this rule directly to the customer either in paper format or electronically as provided in proposed Supplementary Material .03.

Proposed Supplementary Material .02 would limit the customer's ability to decline to receive customer account statements beyond what was permitted in NYSE Rule 409(b) or NASD Rule 2340. NYSE Rule 409(b) prohibits, without NYSE's consent, the delivery of statements, confirmations or other communications to customers (1) in care of a person holding power of attorney over the customer's account unless either (A) the customer has provided written instructions to the member to send such confirmations, statements or communications to such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by the customer; or (2) at the address of any member or in care of a partner, stockholder who is actively engaged in the member's business or employee of the member. NASD Rule 2340 does not contain a similar provision.[14]

3. Proposed Supplementary Material

Proposed FINRA Rule 2231 would transfer with minor changes several related interpretations under NYSE Rule 409. As such, the requirements would become applicable to all FINRA member firms. Specifically, the revised proposal would include:

- **Supplementary Material .05 – Information to be Disclosed on Statement.** The provision would require that customer account statements clearly and prominently disclose on the front of the statement 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 the information is in "bold" or "highlighted" letters; and that the clearing firm is a member of SIPC.
- **Supplementary Material .06 – Assets Externally Held and Included on Statements Solely as a Service to Customers.** The provision would require clear and prominent separation on the statement when a customer account statement includes assets that the firm does not hold on behalf of the customer and that are not included on the firm's books and records, and sets forth other required disclosures.
- **Supplementary Material .07 – Use of Logos, Trademarks, etc.** The provision would require that firms not use the logo, trademark or other similar identification of a person (other than the introducing firm or clearing firm) on a customer account statement in a manner that is misleading or causes customer confusion.
- **Supplementary Material .08 – Use of Summary Statements.** The provision would set forth requirements when a firm seeks to jointly formulate or distribute customer account statements together with a statement summarizing or combining assets held in different accounts (summary statement).

In addition, proposed FINRA Rule 2231 would add the following as new supplementary material:

- **Supplementary Material .01 - Compliance with FINRA Rule 4311 (Carrying Agreements).** The provision would remind firms that Rule 4311(c)(2) generally requires each carrying agreement, in which accounts are carried on a fully disclosed basis, to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.
- **Supplementary Material .03 – Use of Electronic Media to Satisfy Delivery Obligations.** The provision would allow firms to satisfy their delivery obligations under the proposed rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes.
- **Supplementary Material .04 – Compliance with FINRA Rule 3150 (Holding of Customer Mail).** The provision would permit firms to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.[15]

C. Request for Comment

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 areas:

1. Does the revised proposal to retain the quarterly delivery requirement address the operational and cost concerns commenters raised about the proposed monthly delivery requirement in the initial filing?
2. From time to time, firms have raised questions regarding the scope of the term "general securities member" as defined in NASD Rule 2340(d). The definition excludes firms that do not carry customer accounts and do not hold customer funds or securities.[16] Should the definition of "general securities member"[17] be amended or clarified to better align with the obligations of clearing or carrying members? Should FINRA revise the proposed definition of "general securities member" to mean any firm that carries customer accounts, clears customer transactions or otherwise holds customer funds or securities? It is FINRA's intent to require firms conducting a DVP/RVP business to comply with the requirements of the rule; should the definition be clarified to include firms conducting DVP/RVP business? [18] Separately, should the definition be clarified with respect to its application to firms that operate commission rebate or recapture programs (some acting as aggregators of such balances) and that hold such balances for customers?
3. What impact will proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons) have on existing practices with respect to the transmission of account statements and other documents to third parties? Commenters are encouraged to provide cost projections where practicable.
4. What is the current industry practice with respect to sending account statements to customers, for example, where the customer is disabled or incapacitated, resides in a nursing home, has a trusted person to review statements, or there is a valid power of attorney or guardianship established? Have firms implemented any safeguards or best practices to address these situations?
5. Should the proposed rule include specific exemptions that would allow firms not to send account statements to customers under identified situations? If so, what situations and why?

FINRA also specifically requests comments on the economic impact and expected beneficial results of the proposed rule:

1. What direct and indirect costs will result from proposed Supplementary Material .02?
2. Are the costs imposed by proposed Supplementary Material .02 warranted by the potential protection to customers from receiving duplicate account statements?
3. What benefits or burdens would result for customers from proposed Supplementary Material .02?
4. What impact, if any, would proposed Supplementary Material .02 have on business practices and competition in the financial industry?

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

Endnotes

1. For convenience, Incorporated NYSE Rules are referred to as NYSE Rules.
2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
3. *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.
4. The term "general securities member," is defined in NASD Rule 2340(d) to mean "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). 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."
5. *See* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing File No. SR-FINRA-2009-028).
6. *See* the SEC's website for a list of commenters to the initial filing.
7. *See* Securities Exchange Act Release No. 64969 (July 26, 2011), 76 FR 46340 (August 2, 2011) (Notice of Filing of Amendment No. 1 to File No. SR-FINRA-2009-028) (Amendment No. 1 to the initial filing).

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8. For example, a firm could send quarterly statements to customers if the firm relies on an appropriate rule, regulation, release, interpretation, "no-action" position or exemption issued by the SEC or its staff that (1) specifically applies to the fact situation of the activity; (2) provides relief from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (3) permits quarterly delivery of customer account statements. Similarly, a firm could send quarterly statements to customers for various passive activities, such as the receipt of funds in accounts that are not directly from a purchase or sale transaction, including the receipt of interest and dividends. A firm otherwise eligible to send quarterly account statements by meeting such requirements would have been required to provide customers access to current information on their accounts via the Internet and by telephone.

9. *See* the *SEC's website* for a list of commenters to Amendment No. 1 to the initial filing.

10. *See* Securities Exchange Act Release No. 67588 (August 2, 2012), 77 FR 47470 (August 8, 2012) (Notice of Withdrawal of File No. SR-FINRA-2009-028).

11. In addition, the revised proposal would not include several supplementary materials from NYSE Rule 409. Specifically, the proposal would not adopt: (1) NYSE Rule Interpretation 409(a)/01 (Applicability), but would add Supplementary Material .01 (Compliance with FINRA Rule 4311 (Carrying Agreements)) to remind firms of their obligations under Rule 4311(c)(2); and (2) NYSE Rule Interpretation 409(b)/01 (Standards For Holding Mail For Foreign Customers), but would add Supplementary Material .04 (Compliance with FINRA Rule 3150 (Holding of Customer Mail)) to permit firms to hold customer account statements consistent with the requirements of Rule 3150.

12. *See* supra note 4.

13. *See* Securities Exchange Act Release No. 71545 (February 12, 2014), 79 FR 9535 (February 19, 2014) (Notice of Filing File No. SR-FINRA-2014-006). *See* Securities Exchange Act Release No. 72193 (May 20, 2014), 79 FR 30217 (May 27, 2014) (Order Instituting Proceeding to Determine Whether To Approve or Disapprove File No. SR-FINRA-2014-006). *See also* Amendment No. 1 to SR-FINRA-2014-006 and Response to Comments (July 11, 2014).

14. NYSE Rule 409(g) also provides that firms 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. FINRA recommends eliminating NYSE Rule 409(g) because its provisions advising members to send duplicate account statements to guarantors is better addressed by the general requirement described above to obtain written instructions from the customer to send customer statements to third parties.

15. The SEC approved FINRA's proposed rule change to adopt rules regarding supervision in the consolidated FINRA rulebook, including specifically FINRA Rule 3150 (Holding of Customer Mail). *See* Securities Exchange Act Release No. 71179 (December 23, 2013); 78 FR 79542 (December 30, 2013) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook, as Modified by Amendment No. 1) (File No. SR-FINRA-2013-025). The consolidated supervision rules become effective on December 1, 2014. *See Regulatory Notice 14-10*.

16. *See* Securities Exchange Act Release No. 31319 (October 14, 1992); (Order Approving Proposed Rule Change Relating to Periodic Account Statements) (File No. SR-NASD-92-29).

17. *See* supra note 4.

18. The proposal would retain the current provisions of NASD Rule 2340(b) that permit firms not to send quarterly customer account statements to DVP/RVP customers if certain conditions are satisfied.

Attachment A

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

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 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. 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 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 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]FINRA Rule 4511[and SEA 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]3(j)(1) 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 Rule [2810] 2310 (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]Commodity 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 Compliance with Rule 4311 (Carrying Agreements). Members are reminded of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2) that generally requires each carrying agreement in which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.

.02 Transmission of Customer Account Statements to Other Persons. Except as required to comply with NASD Rule 3050 and Incorporated NYSE Rule 407, a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account unless (a) the customer has provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; and (b) the member sends duplicates of such statements or other communications in accordance with this Rule directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 below;

.03 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.

.04 Compliance with FINRA Rule 3150 (Holding of Customer Mail). A member is permitted to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.

.05 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.

.06 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 that are not included on the member's books and records, such assets must be clearly and distinguishably separated on the statement. The statement must:

(a) clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer;

(b) 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

(c) identify that such externally held assets may not be covered by SIPC.

.07 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 that is misleading or causes customer confusion.

.08 Use of Summary Statements. Where a member holds a customer's account and another person(s) who separately offers financial related products or services to the same customer (*e.g.* mutual fund sales and custodial services, banking products and services, insurance products and services, securities products and services, etc.) seek to jointly formulate 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) 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 firm, carrying firm, fund distributor, banking or insurance product provider, 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; if the customer's account number and the contact information for customer service at each entity are included on their respective account statements, then such information need not be included on the summary statement; and

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

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

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

(d) Ensure that there is a written agreement between the clearing firm and each other person jointly formulating or distributing its respective customer account statements attesting that each such person has developed procedures and controls for reviewing and testing the accuracy of the information included on its respective statements; and

(e) Ensure that the summary statement complies with Rule 2231.

* * * * *

Text of Incorporated NYSE Rule and NYSE Rule Interpretation to be Deleted in the Transitional Rulebook

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Incorporated NYSE Rule

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Rule 409. Statements of Accounts to Customers

[(a) 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) Reserved.][1]

[(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.]

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[1] Paragraph (f) of NYSE Rule 409 was deleted from the Consolidated FINRA Rulebook with the approval of Rule FINRA 2232. See Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (Order Approving File No. SR-FINRA-2009-058).

[**(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 supervisor of a member organization, 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.]

* * * * *

NYSE Rule Interpretation

* * * * *

RULE 409 STATEMENTS OF ACCOUNTS TO CUSTOMERS

[(a)]

[/01 Reserved.][2]

[/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 service[1];]

[[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

[2] Rule 409(a)/01 (Applicability) was deleted from the Consolidated FINRA Rulebook with the approval of FINRA Rule 4311 (Carrying Agreements). See Securities Exchange Act Release No. 63999 (March 1, 2011), 76 FR 12380 (March 7, 2011) (Order Approving File No. SR-FINRA-2010-061).

statement. If it does, it must be in “bold” or “highlighted” letters.]

[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 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 combing 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]]

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

[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 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.]

EXHIBIT 2e

Alphabetical List of Written Comments
Regulatory Notice 14-35

1. William Beatty, North American Securities Administrators Association, Inc. ("NASAA") (October 31, 2014)

2. David T. Bellaire, Financial Services Institute ("FSI") (October 31, 2014)

3. Chris Charles, Wulff, Hansen & Co. ("Wulff") (September 17, 2014)

4. Brittany DeDiego, Chris Pugh & Nicole Iannarone, Georgia State University College of Law's Investor Advocacy Clinic ("GSU") (October 31, 2014)

5. Carrie Devorah, The Center for Copyright Integrity (October 31, 2014)

6. Marylyn M. Feaver (October 3, 2014)

7. Kiera Fitzpatrick, Jeffrey Valacer, Elissa Germaine & Jill Gross, Investor Rights Clinic at Pace Law School, Operating Through John Jay Legal Services, Inc. ("PIRC") (October 31, 2014)

8. Bradley J. Frigon & Patrice A. Icardi, National Academy of Elder Law Attorneys, Inc. ("NAELA") (October 31, 2014)

9. Robert L. Hamman, First Asset Financial, Inc. ("FAF") (October 30, 2014)

10. Jesse Hill, Edward D. Jones and Co., L.P. ("Edward Jones") (November 12, 2014)

11. Jenice L. Malecki, Malecki Law ("Malecki") (October 30, 2014)

12. Robert J. McCarthy, Wells Fargo Advisors, LLC ("WFA") (October 30, 2014)

13. Frank Muller, Auerbach Grayson ("Auerbach") (October 23, 2014)

14. Thomas F. Price, Securities Industry and Financial Markets Association ("SIFMA") (November 14, 2014)

Exhibit 2f

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Washington, D.C. 20002
202/737-0900
Fax: 202/783-3571
www.nasaa.org

NASAA

October 31, 2014

Submitted electronically to pubcom@finra.org

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006

RE: Regulatory Notice 14-35

Dear Ms. Asquith:

On behalf of the North American Securities Administrators Association ("NASAA"),[1] I hereby submit the following comments in response to Regulatory Notice 14-35 entitled Customer Account Statements. NASAA appreciates the opportunity to offer its comments on FINRA's proposal regarding the delivery of account statements.

NASAA urges FINRA to revert to the monthly delivery requirement as originally proposed. More frequent delivery of account statements allows clients to better monitor their accounts and to identify any potential unauthorized or fraudulent activity in a more timely fashion. FINRA members have previously argued that a monthly delivery requirement would be too costly in light of what industry has characterized as the limited benefit to investors of receiving their account statements more frequently. In NASAA's view, proposed Supplementary Material .03 to Rule 2231 alleviates the cost concerns previously raised by the industry. The proposed supplementary material makes clear that FINRA members can satisfy their account statement delivery obligations electronically. Explicitly providing for the electronic delivery of account statements reduces the compliance costs associated with delivering account statements and addresses the prior concerns raised by the industry.

The current proposal also requires firms to deliver account statements directly to clients even when clients have provided explicit written instructions to have their statements delivered elsewhere. This requirement of direct delivery to clients could pose risks to clients that cannot ensure the privacy of their account statements, such as clients living in nursing homes or other assisted living facilities or clients who may remain living in their own homes but rely on the services of full-time caregivers. These types of clients, generally elderly individuals or individuals suffering from diminished capacity, cannot ensure that their account statements are

[1] NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

President: William Beatty (Washington)
President-Elect: Judith M. Shaw (Maine)
Past-President: Andrea Seidt (Ohio)
Acting Executive Director: Joseph Brady
Secretary: Kathryn Daniels (Ontario)
Treasurer: Michael Rothman (Minnesota)
Ombudsman: Keith Woodwell (Utah)
Directors: Joseph P. Borg (Alabama)
Melanie Senter Lubin (Maryland)
Gerald Rome (Colorado)
Daphne D. Smith (Tennessee)

kept private. For example, a client living in a nursing home may not directly receive his or her own mail or may be unable to ensure that sensitive information contained in his or her account statements remains private. At the same time, however, NASAA recognizes the risks posed by removing the direct delivery requirement. If a client does not regularly receive his or her account statements, the client may not be able to detect unauthorized activity in his or her account or notice decreasing account balances.

FINRA must strike the proper balance between these two competing interests, each of which, if not addressed, could pose risks to investors. In the proposal, FINRA specifically seeks comments on whether the proposal should include certain exceptions for the direct delivery requirement. In NASAA's view, instead of creating exceptions to the direct delivery requirement, FINRA should require that more rigorous standards be satisfied before account statements can be delivered to someone other than the account holder. For instance, the written instructions executed by the client should be subject to a medallion signature guarantee or at a minimum notarization. These added verification steps help to ensure that a client in fact wishes to have his or her account statements delivered to a third-party. A client's intent to have statements delivered to a third-party must be expressed in the clearest terms possible because once account statements are no longer sent to the actual account holder, it is exponentially easier to defraud investors of their money.

In addition to the more stringent verification requirements for alternate account statement delivery instructions, when clients elect to have statements delivered to a third-party, firms should be required to deliver notices to these clients indicating that their account statements have been delivered to a third-party pursuant to their instructions. These notices should be delivered with the same frequency as account statements, should identify the third-party to whom the detailed statement was delivered, and direct clients to contact the firm if they would like a detailed statement or to inform the firm if they no longer desire to have their account statements delivered to the identified third-party.

NASAA appreciates the opportunity to offer its comments on the current proposal, and believes these proposed changes to the proposal strike the proper balance between clients' interest in timely receiving account statements and attempting to mitigate the risks created when clients may be unable to ensure the privacy of their account statements. Should you have any questions about NASAA's comments or desire to discuss the matter further, please contact NASAA's Acting Executive Director and General Counsel, Joseph Brady, at (202) 737-0900 or jb@nasaa.org.

Sincerely,

William Beatty
NASAA President
Washington Securities Administrator

FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

October 31, 2014

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

Re: Regulatory Notice 14-35: Customer Account Statements

Dear Ms. Asquith:

On September 16, the Financial Industry Regulatory Authority (FINRA) published a request for comment on a revised proposal to transfer current NASD Rule 2340 (Customer Account Statements) and Incorporated NYSE Rule 409 (Statements of Accounts of Customers) into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements). The revised proposal would require firms to send account statements at least once each calendar quarter to each customer whose account had activity during the period since the last statement was sent to the customer. The proposal would also allow customers to direct transmission of customer account statements and other documents to third parties, provided the firm sends duplicate statements directly to the customer.

The Financial Services Institute[1] (FSI) appreciates the opportunity to comment on this Regulatory Notice. FSI applauds FINRA for revising its proposal in light of concerns from commenters to the earlier proposal. FSI previously expressed concerns regarding the proposed monthly delivery requirements, and supports the new approach that FINRA has proposed through this Regulatory Notice. While we appreciate and understand the concerns underlying the proposed requirement that firms send duplicate statements and other documents to customers in situations where customers have chosen to direct transmission to a third-party, under certain circumstances these requirements may lead to customers being exposed to additional risks. We expand on these comments below.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds

[1] The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.[2] These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically "main street America" – it is, in fact, almost part of the "charter" of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.[3] Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

FSI appreciates the opportunity to submit comments on Regulatory Notice 14-35. FINRA's original proposal would have made significant changes to the existing rules, specifically with a requirement that the existing quarterly customer account statement delivery requirement be replaced with a monthly delivery requirement for each account that had activity during the monthly period. FSI commented on the costs that customers would bear under the requirement compared with proposed benefits from implementing the change. FSI also supported the adoption of the amended proposal, which would have made meaningful changes with respect to the types of account activities to be excluded from the monthly delivery requirements. FSI applauds FINRA for the revisions made to this rule in light of comments, specifically the decision to maintain the quarterly account statement delivery requirements. With regard to the proposed Supplementary Material limiting the customer's ability to decline to receive customer account statements, FSI provides the following comments:

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[2] Cerulli Associates at http://www.cerulli.com/.

[3] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisers.

- **Considerations for Elderly Customers:** FSI and its members are committed to the prevention of elder financial abuse and exploitation. To that end, we believe the proposed requirement regarding the transmission of duplicate statements or other communications may require additional guidance or clarification to avoid the potential unintended consequence of increasing risks to elderly clients. FSI suggests that FINRA provide specific exceptions for instances where clients can decline to receive duplicate statements because it would be against their best interest. Below FSI provides specific examples:
    - *Residential Care Facilities*: Where elderly clients are living in nursing homes, intermediate care facilities, or are provided ongoing in-home care, these customers will often not be able to keep these statements private from third-parties with whom they do not have a trusted relationship. If a client in this type of situation provides specific instruction to have statements and other documents sent to a third-party, FINRA could provide an exception from the requirement to send a duplicate statement to the client.
    - *Elderly Investors Who Raise Suspicions Regarding Potential Financial Abuse:* In some instances elderly or vulnerable people themselves may raise suspicions to their financial advisor or an authority, such as FINRA or a county or state body, that they are being taken advantage of or their accounts are being compromised by a caretaker or family member. This could also occur with investors under a conservatorship or guardianship. In these instances, FINRA could allow an exception from the requirement to send duplicate statements.

The issue of financial exploitation of the elderly is a major concern shared by the public, regulators, and the financial industry. Often, it is FSI member firms and financial advisors who are the first to notice early signs of diminished capacity or to identify and raise suspicions of situations where an older client is potentially being financially exploited by others. In response to this growing need, FSI created a resource center website to assist firms and financial advisors in identifying and reporting elder financial abuse, which includes reporting information for all 50 states.[4] Given the importance of the issue and the concern shared across the board, we urge FINRA and the SEC to consider the above situations when finalizing this proposal.

- **Additional Considerations for Deceased or Impaired Customers:** In addition to considerations regarding elderly or incapacitated clients, FSI also notes an additional circumstance where it may be in the best interest of the client to be able to decline delivery of their statement:
    - *Executors of Estates and Letters of Testamentary*: The revised rule does not provide guidance or exception for legal executors of a decedent's estate and letters of testamentary. In instances where a legal representative of the estate requests that customer statements be sent to a third party, duplicates would still be sent to the decedent's address. FINRA should consider providing an exception from the requirement in these circumstances.
    - *Vision Impaired Clients:* Clients suffering from vision impairments such as blindness may justifiably worry about their ability to maintain the privacy of sensitive documents they receive. In these situations, having these documents sent only to a trusted third-party such as a relative or individual with power of attorney may be

[4] http://www.financialservices.org/elderabuse/

the most appropriate method of maintaining privacy and avoiding potential misappropriation or abuse. FINRA should provide exceptions for these instances as well, including conditions where a signature is not required by the client.

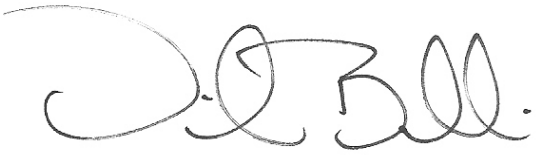
These situations are just two examples of situations where it may be contrary to the investors' best interest that they receive duplicate statements. There are additional scenarios that would present the same concerns under slightly varying circumstances.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

Thank you for your consideration of our comments. Should you have any questions, please contact me at (202) 803-6061.

Respectfully submitted,



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September 17, 2014

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

Dear Ms. Asquith:

Thank you for the opportunity to comment on Regulatory Notice 14-35 regarding proposed changes to the rules governing delivery of customer statements.

The revised proposal includes meaningful changes in response to comment on the original proposal, and these changes are generally improvements. We support the current proposal with one exception: It would still require firms to send customer statements to customers who do not wish to receive them because such receipt could put the customer at risk. For example, elderly customers whose living situations do not allow them to keep any documents or possessions in privacy (such as nursing home residents or those with constant in-home care providers) would involuntarily have their financial affairs and personally identifiable information exposed to unvetted third parties. The same applies to those customers who suffer a disability such as blindness. The risk of misappropriation could be significant, and FINRA should not force such customers to take that risk when the customer prefers, in his own best interest, not to do so.

Customers for whom a valid conservatorship, guardianship, or power of attorney has been established, or who have a trusted third party to whom they want the information sent, should be allowed to forgo receipt of their statements if they feel that receipt would put them at risk. We believe that all customers should have an absolute right to control the distribution or non-distribution of their confidential personal financial information, and should not be deprived of that right when they believe that disability or other factors put them at actual or potential risk.

Firms who have received a written request from a customer to send account statements to a specified third party but not to the customer should be allowed to honor the customer's wishes. Depending on the known facts and circumstances with regard to the relationship between the customer and the third party, sound supervisory practice could make it appropriate for the firm to have a heightened awareness of activity in such accounts. The need for this, however, should be determined by the facts of the individual situation and should not be a specific requirement.

Thank you again for the opportunity to comment.

Sincerely,

Chris Charles
President

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Georgia State University | COLLEGE OF LAW

October 31, 2014

VIA ELECTRONIC SUBMISSION

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

Re: Regulatory Notice 14-35
Comments on Proposed Adoption of FINRA Rule 2231

Dear Ms. Asquith:

Thank you for the opportunity to comment on Notice 14-35. We are submitting these comments on behalf of Georgia State University College of Law's Investor Advocacy Clinic. Our clinic represents investors who have suffered losses resulting from broker misconduct but cannot afford or find legal representation due to the size of their claim. We serve as the voice of small investors and because this proposal could affect small investors in arbitration, we submit this comment letter in support of this rule with some variations.

We support the goal captured by FINRA's proposal, which would provide greater protections for investors, however, we believe some of these protections could be expanded. First, the proposed changes that would allow a third party to receive statements can provide greater protection for the investor so long as the investor continues receiving his own statement every quarter. Second, the electronic statements will provide greater flexibility and greater access to statements, however, this should be permitted only if the investor affirmatively elects the option. Finally, although brokers should not be permitted to relinquish their responsibility to review and monitor their clients' account, the SIPA disclosure could go further to make the information even more prominent.

The option for a third party to receive quarterly statements can provide greater protection for investors. Some investors, especially the elderly, would greatly benefit from this change because it creates the option of having additional eyes monitor accounts for discrepancies. We agree that the statements should continue to be sent to the investors in addition to the third party. If the investor were not to receive their own statements, it could increase the risk of fraud

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because the investor would not be able to monitor their own account, which would make it harder for the investor to report potential problems or ask questions.

We also support the possibility of electronic statements if the investor must affirmatively elect the option. By allowing electronic statements, this rule will give investors more control and choice over how their statements are received. Many investors monitor their banking and other financial accounts online. For investors who prefer this method, it would provide easier access to account information as well as decrease the opportunity for lost or stolen mail. However, because many investors, including some senior investors, do not use technology to monitor their finances, a default rule for electronic statements in all cases unless an investor opts out would not benefit all investors. Investors who are not technologically savvy might not know how to electronically opt-out of an electronic statement policy, creating confusion as well as the possibility of an investor not being able to access his statements.

The requirement to provide SIPA disclosure on the first page of the quarterly statement also helps protect investors. By requiring a firm to clearly and prominently disclose on the front of the statement the contact information for customer concerns, smaller investors are more likely to get the help or clarification they need in order to better understand their statements and monitor their accounts. It also serves as a reminder that investors should regularly review their statements and ask questions. This rule could provide even more protection, however, by requiring the contact information for the clearing firm to be on the front of the statement with the disclosure, and not on the back of the statement. If the goal is to highlight the information, putting it on the back of the statement, even if bold or highlighted, could result in the investor missing it. Ideally, the SIPA disclosure would be placed on the envelope to alert investors to the importance of reviewing their statement, as well as alert them to carefully review the contents of the statement. We also want to ensure that these SIPA disclosures do not incentivize brokers to shirk their responsibilities to alert investors of potential problems or shift the burden solely to investors.

Conclusion

We support FINRA's efforts to protect investors through the adoption of Regulatory Notice 14-35. By providing more options for investors to receive their quarterly statements, the proposal provides more safeguards for investors and greater flexibility to monitor their accounts.

Best regards,

Brittany DeDiego
Student Intern

Chris Pugh
Student Intern

Nicole Iannarone
Assistant Clinical Professor

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Regulatory Notice 14-35

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FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)

At a time when the SEC is seeking oversight of Crowdfunding, at a time when Technology dominates the Investment scene, online and off, at a time when the proverbial envelope is being pushed farther/faster, at a time in a world of Internet fraud, hacking, electronic signatures can 'be' anyone from anywhere in the world, anyone but the named/signed person, it is mandatory FINRA do as the Russians do, move accountability back to typewriters and paper, not move forward to Electronic Signatures.

Electronic signatures, often just initials, two or three letters, with infinite anagram possibilities, are here this second and gone in a flash. With increasing unknown, unseen eyes and hands on private information, the Algorithmic gold, facilitated by entities like Silk Road, TOR Project and an email world of BCC, never before has it become more crucial to keep everything above board and tangible, especially with FINRA, a 501(c)(6) that operates by its own By-Laws, Rules and Codes of Procedures, misstated to be compliant with the FAA, Federal Arbitration Act.

The FAA is neutral. FINRA arbitrations, in which Signatures are Prima Evidence, are not neutral. FINRA General Counsel Terri Riecher states there is a get-out-of-jail-free lifeline for FINRA SRO members, brokers and brokerages and for Investment Advisors signing FINRA broker arbitration agreements to submit to FINRA cloaked arbitrations.

Real signatures are Investor gold. Real Signatures are Investor justice. Well, almost. Not in a FINRA forum where, like on Halloween, strange things happen and go ‘bumped’ in the night, by hackers alleged to be Chinese. Allegedly. Every financial firm has an IT architect inside, employed today at the firm and gone tomorrow. These IT architects know the Firms tech guts intimately, even after leaving the Firm’s employment, a fact very hard to dispute when Documentation is in hand showing a Firm’s IT architect hacked client over 6 years after the IT architect left. And the Firm that got hacked, knew, never notifying the Client.

So, real ink signatures are needed.

All well intentioned Dodd-Frank was crafted to be, Dodd-Frank fails protecting investors and bank clients. The system is already too big that it can only fail. There aren't enough eyes to look everywhere,

moreso, many employees would not recognize the crime when they saw it, at first blush. Clients, for sure, would not recognize the crime in that in an IT world IT crime allows the their to create different lives for the client's accounts- what the client sees and what the client does not see, by design.

Clients do not see papers inside their accounts ever. FINRA protects the sordid behaviors of ethnic SRO's that away. And if an arbitration is launched, FINRA protects their SRO members even more, having two sets of standards for FINRA arbitration participants. FINRA Case Managers do not compel Industry arbitration participants to produce Discovery the SEC compels be kept 6 years. FINRA trained arbitrators compel Investors to produce everything showing where Investor assets are kept. Investors learn nothing of where Industry assets are kept or co-mingled.

The Investor knows little about their Industry financial manager they day he Investor files an Arbitration complaint, finagled by FINRA in to the FINRA forum rather than being sent to a neutral forum as required in FINRA By-Laws, Rules and Code of Procedures.

Customers presume the Home Office of an investment firm has oversight of what investment managers do in field Offices. The fact is there are Investment firms parent companies that do not have access to the field office the Investor is a customer of.

The debate should not be allowing Electronic Signatures but, quarterly, sending clients cover-to-cover copies of the clients file, signed off with real signatures, possibly scanned, but for sure, followed up with a real ink signature sent through the US mails. Customers should have access to ALL of their file from before becoming a customer through exits.

Real signatures are lie detectors. Electronic signatures are lie facilitators. The Investor's goal is to mitigate their becoming involved with fraudulent Industry persons shielded by Financial SRO's.

Overstating? No. Watch American Greed.

Electronic fraud, internet fraud are exponentially increasing. Paper rules. Customers must be encouraged to go back to paper. Without proof, without that ink on paper signature, the Investor is left chasing phantoms, a signature that was there and now isn't, gone completely or replaced with different initials.

FINRA loves electronic signatures. Electronic signatures is a win-win for FINRA's incestuous SRO. FINRA isn't about Investor's winning. FINRA conducting non- FAA compliant arbitration is about FINRA members winning, the Investor losing.

With Customers getting cover-to-cover copies of their files, every note, every email exchange between the IA, the Clearing Corp, inter -office emails, intra-office emails etc, and with Customers receiving real ink in paper signatures then clearer pictures of crimes in liners accounts will surface faster. Congress, regulators and law enforcement will get to do their job faster, protecting other Customers.

Remember what. Madoff said.... "They" knew.

They did. Documented.

Sincerely
Carrie Devorah
Founder
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(562)688-2883
MAY BE REPRODUCED ONLY UNDER LICENSE OR PERMISSION
ONLY FINRA AT THIS TIME HAS PERMISSION TO REPRINT THIS COMMENT

As a retired fee-only financial planner (RIA, CFP) and aging investor, I urge positive consideration of rule 2231.

At one time, probably the most traumatic and difficult situation with clients losing their capacity to make decisions was the removal of a car or car keys from their use. As the number of individually managed accounts as grown without an intermediary professional who could determine whether sound decisions were being made or requested, this rule becomes very important to protect assets to be used for the reasons they were accumulated.

In Revocable Trust accounts, most investment companies only require the first and last page of the trust document. In setting up such accounts, they could easily ask for the page which names the person who would exercise power of attorney and request the address of that person should that not be indicated on the trust document. Annual requests for confirmation could be sent (separately from statements) because these designations change. If possible, there should be confirmation that the notification has been received and acknowledged with follow-up if no confirmation is received. This will increase the cost to the investment company, but it is only fair that they accept this responsibility for due diligence.

In Retirement Acccounts, some investment companies such as Vanguard, Schwab, Fidelity request verification of beneficiary. At the same time they could request the name of a person to contact. (Metropolitan Life Insurance company on its long term care policies asks insured to designate a person to be notified in case where there is some problem, more often failure to receive a premium check which would result in cancellation of the policy.) They request that only in the event of change would the investor notify the investment company. This should probably, in the case of notification of back-up person to contact, be verification that the notice has been read and acknowledged with followup if nothing has been received.

Thank you.

Marylyn M. Feaver

Faculty Supervisors
DAVID N. DORFMAN
MARGARET M. FLINT
ROBIN FRANKEL
ELISSA GERMAINE
JILL GROSS
VANESSA MERTON
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Executive Director
MARGARET M. FLINT
Clinic Administrator
ROBERT WALKER
Staff
IRIS MERCADO

October 31, 2014

VIA ELECTRONIC MAIL

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

Re: Regulatory Notice 14-35, Comment on Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)

Dear Ms. Asquith:

The Investor Rights Clinic at Pace Law School, operating through John Jay Legal Services, Inc. ("PIRC"),[1] welcomes the opportunity to comment on FINRA's proposed transfer of current NASD Rule 2340 (Customer Account Statements) and Incorporated NYSE Rule 409 (Statement of Accounts of Customers) into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements). PIRC generally supports the rule proposal to the extent that it provides for full disclosure and customer choice regarding account statements and transmission of account statements and communications to third parties.[2]

However, as discussed more fully below, PIRC proposes five revisions to the rule proposal. PIRC recommends that FINRA: (1) require general security member firms to provide customers with the option of receiving monthly statements or quarterly statements; (2) require general security member firms to allow customers, at their request, to access their account information via telephone or electronically; (3) ensure that SIPA disclosures cannot be used against a customer in a dispute in the future; (4) provide guidance to general securities member firms with respect to how the SIPA disclosure appears on account statements so it is not hidden from the customer; and (5) allow customers to opt-out of the requirement that duplicates of communications sent to third parties also be sent to customers.

[1] PIRC opened in 1997 as the nation's first law school clinic in which J.D. students, for academic credit and under close faculty supervision, provide pro bono representation to individual investors of modest means in arbitrable securities disputes.

[2] Since PIRC primarily advocates on behalf of investors of modest means, PIRC is not commenting at this time on issues related to institutional investors.

Maintenance of Quarterly Delivery Requirement

PIRC supports FINRA's decision to maintain its requirement of quarterly delivery of statements to accountholders as long as FINRA provides the option to customers to request monthly delivery of their account statements. Although PIRC believes monthly statements provide customers with a more accurate reflection of a customer's investments, PIRC understands positions expressed during the initial filing that requiring the delivery of monthly statements as the default rule might unnecessarily drive up administrative and postage costs,[3] which would be passed onto accountholders in the form of higher fees.[4] Thus, keeping the investor in mind, the continued delivery of quarterly statements as the default rule still allows accountholders to maintain a relatively high level of knowledge and information about their accounts while keeping administrative costs to a minimum.

Nevertheless, PIRC believes that customers should have more choices about how they receive information about their investments and recommends that FINRA amend Rule 2231(a) to require general securities members to provide customers with various options that allow customers to tailor the delivery of their account statements to their individual needs. First, PIRC recommends that customers be provided with the option to receive account statements electronically and to make available to customers a status of their accounts via telephone or online at the customer's request. While many firms already provide this option, PIRC believes that this additional option will prevent an overall influx of administrative costs that general securities members fear would be the result of requiring monthly statements across the board, as initially proposed.

PIRC believes these options will permit investors to make more informed decisions about managing their money, as volatility has returned to the global stock market. Furthermore, the option of receiving monthly statements and the ability to check account status via telephone or online would permit customers to more quickly notify firms of discrepancies or potential fraud (e.g., identity theft). Although many member firms already make available to their customers online access to their accounts to view at any time, as noted above, there remains a segment of the account-holding public that may not have internet or computer access or those who may not be technologically-savvy. Thus, PIRC believes it is imperative to provide the customer with the ultimate decision to receive statements on a monthly or quarterly basis, along with access to accounts via telephone or electronically, to ensure that investors are in control of their investments and accounts.

Requirement to Provide SIPA Disclosure

Proposed FINRA Rule 2231(a) also would require customer account statements to advise customers to report promptly any inaccuracy or discrepancy in their accounts and to re-confirm any oral communications in writing to protect the accountholder's rights under the Securities

[3] PIRC's concern with increased administrative and postage costs that would pass onto accountholders in the form of higher fees do not include customers who have chosen e-delivery of statements. Although firms providing the e-delivery option still have costs associated with the delivery, such costs are likely lower compared to postage delivery of account statements.

[4] PIRC does not support the practice of passing costs on to investors; however, PIRC acknowledges that in reality, firms may do so.

Investor Protection Act (SIPA). While this proposal appears to be intended to protect investors, PIRC is concerned that it could backfire and harm investors by providing firms with a potential defense to claims in arbitration. Our experience in the clinic is that member firms use disclosure language as weapons against customers; requiring such language may provide more ammunition to firms. As a matter of public policy and to provide sufficient safeguards to the customer, PIRC recommends that FINRA amend this portion of the proposal to ensure that such SIPA disclosures cannot be used against a customer in a dispute in the future.

Additionally, PIRC recommends that the proposal include guidelines to general securities member firms with respect to how the SIPA disclosure appears on account statements. For example, PIRC suggests that FINRA require that member firms' SIPA disclosures be highlighted and clear to the customer. PIRC believes that such guidelines will prevent general securities member firms from burying SIPA disclosures in the back of account statements or in the fine print, which customers may not be able to locate easily.

Transmission of Customer Account Statements to Other Persons

PIRC agrees with FINRA's proposal that a firm may not send a customer's account statements or other communications to other persons or entities unless the customer has provided written instructions to the firm to send such statements or communications to those third parties. Customer account statements are confidential documents showing an accountholder's personal financial details. As such, requiring informed written consent by customers allowing the transmission of account statements to third parties should ensure that customer account statements are shared with other persons only with the customer's express approval.

Additionally, PIRC supports FINRA's proposal that requires firms to send customers duplicates of statements or other communications sent to third parties. Allowing for the customer to have full knowledge of third-party communications permits customers to contact their firm with any questions or concerns in a timely fashion upon receipt of the third party communication. However, while PIRC supports this position as the default rule, PIRC recommends that FINRA refine its proposal to allow customers to opt-out of this requirement in writing. An "opt-out" provision benefits customers in circumstances in which they would prefer that only the designated third party receive account information, particularly where a customer grants a third party a general power of attorney, a customer is disabled or incapacitated, or a customer resides in an adult or nursing home facility. Thus, PIRC believes this approach maximizes disclosure while keeping true to the idea that the customer is the master of his or her account.

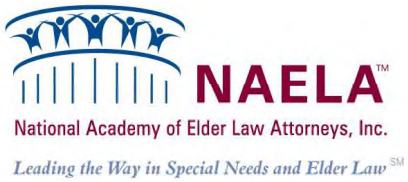
In sum, PIRC generally supports FINRA's proposal to Rule 2231 regarding customer account statements and believes the proposal is consistent with FINRA's goal of protecting investors by providing customers with full disclosure. However, FINRA should refine portions of the proposal to provide more options to customers regarding the receipt of account statements in order to tailor information delivery to the customer's needs.

Respectfully submitted,

Kiera Fitzpatrick & Jeffrey Valacer
Student Interns, PIRC

Elissa Germaine
Supervising Attorney, PIRC

Jill I. Gross
Director, PIRC



October 31, 2014

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

Dear Ms. Asquith:

On behalf of the National Academy of Elder Law Attorneys (NAELA), and its Guardianship and Conservatorship Steering Committee (Steering Committee), we appreciate the opportunity to comment on Regulatory Notice 14-35 concerning Rule 2231.

NAELA represents more than 4,500 attorneys who are experienced and trained to provide legal advocacy, guidance, and services to enhance the lives of persons with disabilities and people as they age. The Steering Committee consists of members who possess a high level of dedication and expertise on issues related to the legal appointment of decision-makers for incapacitated individuals.

We applaud FINRA's effort to develop a rule to help prevent the financial exploitation of persons with disabilities or who are incapacitated. Unfortunately, the proposed rule would likely do little to protect this vulnerable population in any meaningful way. Nor would it likely address the concerns of the financial organizations that are sending out customer statements. Every situation is unique, and a rule with such general application cannot address the many specific instances that occur every day.

Industry Practices for Customers Who are Disabled or Incapacitated

The Request for Comment asks about industry practices for sending account statements where the customer is disabled or incapacitated. Persons with disabilities or who are incapacitated are unlikely able to send written direction to their financial institution to send duplicate statements. For those residing at a nursing home, they likely do not receive statements personally at this point. It's often the case that statements pile up at their old home where potential exploiters can get access to them.

Financial companies rarely provide information to third parties, like a conservator, unless there is a court order. While withholding this information may make sense under normal circumstances, the right policy becomes substantially more complicated when dealing with the class of individuals at greatest risk for exploitation and financial abuse. While pursuing a court order, financial exploitation can continue causing irreparable harm. Alternatively, an impaired person may give direction to send the statement to the agent under the Power of Attorney who may be the exploiter. It is a complex situation.

Unfortunately, in most states, financial companies who have concerns have no duty to notify agencies, such as Adult Protective Services, of their concerns. In addition, some in the financial industry have resisted calls to become mandatory reporters of suspected abuse and exploitation.

Conclusion
NAELA and its Steering Committee support greater options for customers, but we doubt the Rule will prevent exploitation or provide meaningful change to the serious problem facing all professions when it comes to the exploitation and abuse of the elderly and disabled.

Thank you for your consideration of this issue. If you have any questions or would like to discuss further, please contact David Goldfarb, NAELA's Public Policy Manager (703-942-5711 #232; dgoldfarb@naela.org).

Sincerely,

Patrice A. Icardi
Chairperson
Guardianship and Conservatorship Steering Committee
National Academy of Elder Law Attorneys

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October 30, 2014

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

Re: FINRA Rule 2231 covered by Regulatory Notice 14-35 proposed Supplementary Material .02

Dear Ms. Asquith:

While there is important intent to protect customer privacy, this rule lacks important and essential reference to the investment advisory community, firms and other third parties. The weaknesses of the proposed rule include:

1. No specific mention of the ability of investment advisory firms to receive copies of confirmations or statements. The Rule is mute on this point.
2. No relief for broker dealers who are required by NASD/FINRA to supervise the activities of investment adviser representatives that are dually registered under NASD Notice to Members 94-44 and 96-33 is given under the proposed rule. FINRA specifically requires under 94-44 and 96-33 to review records to determine "the suitability of the transactions."*
3. Failure to recognize that some third parties, such as investment advisers, trust departments, custodians (particularly IRA custodians) and pension plan trustees have a need to receive a duplicate statement of the client for the client's benefit. Some of these third parties cannot function without these copies and, in fact, may be in violation federal, state or SRO rules and regulations. This does not benefit the customer or client (Item 3, page 8 of Regulatory Notice 14-35).
4. While the right to receive customer/client statements and confirmations may be included in the paperwork of the third parties (& signed by the customer/clients) mentioned in item 3, it is highly likely that the broker dealer dispensing the customer statements/confirms will not recognize this request and require a broker dealer specific form (in addition to the 3rd party paperwork) germane to the issuing B/D to deliver the duplicates under this rule. There is no specific reference to the ability for a broker dealer to accept forms generated by a third party (that may include other aspects of the relationship between the customer/client and the third party as well as permission to receive duplicate statements) giving permission to the broker dealer to send duplicate statements/confirmations to the third party.
5. The proposed Rule fails to recognize that the customer/client information is required and critical for an investment advisory firm to perform its duties to the customer/client. As RIA firms do not fall under the definition in the Rule as a "general securities member" they are not included as an entity entitled to the customer/client information under the Rule.
6. As proposed, the Rule appears to provide a "Catch 22" scenario, whereby FINRA expects to see information about RIA supervision and RIA client information for

dually registered persons at the broker dealer who is expected to supervise this activity, yet this rule does not easily provide for such information to be available to the supervising b/d in the proposed rule.

7. Although the rule is promulgated under the guise of customer benefit via privacy protection, the customer will be asked to sign yet another form allowing the custodian broker dealer to provide the statements to a third party (RIA, trust, IRA custodian or broker dealer of the dually registered person). This additional form is additional work and cost for the issuing broker dealer, supervising broker dealer (of the dually register IAR), the third party and the client. Simply wording the Rule to specifically allow the third party's contract/form/agreement to meet FINRA's requirement for customer permission for the issuing broker dealer to provide duplicate statements/confirmations to the third party. FINRA should even consider providing that specific wording that could be included in the third party's agreement, contract or other internal paperwork in the Rule.

In conclusion, the failure of the Rule to specifically allow Registered Investment Advisors, IRA Custodians and perhaps other third party entities (e.g., trusts, Solicitors, etc.) impacts the benefit and costs of the proposed Rule. The proposed Supplementary Material .02 results in a burden being imposed on the broker dealer issuing the statements/confirms and the customer. As a practical matter, broker dealers who issue statements and confirms of the customers will most likely require their own (in house) permission form to be signed by the customer(s) to allow duplicate statements to be sent to a third party. This will be the result of the strong wording of the proposed rule and necessary to protect the issuing broker dealer. The direct costs of issuance, tracking and retaining the forms would not benefit the issuing broker dealer. The indirect cost of time spent on the additional form does not benefit the customer/client, broker dealer or third parties.

The proposed Rule is incomplete and will have negative consequences for all involved parties. Please add specific language to the Rule either to except those third parties who are integrally involved in the customer account(s) (RIA, Solicitor, Custodian, etc.) allow broker dealers issuing statements to send such statements (preferable without requiring customer consent by simply relying on the nature of the third party) or include specific language to allow the third party entities to receive statements/confirms based on the third party's documentation.

The costs imposed by proposed Supplementary Material .02 is **NOT** warranted by the potential protection to the customer where there is no need to "protect" the customer from their own Registered Investment Advisers who are advising them, Custodians of the Customer's IRA, or the trust company managing the customer's account! The proposed Supplementary Material .02 provides a barrier, rather than assistance to the customer and third parties. It would further complicate the business practices of an already complicated business. Please make further changes in this Rule to benefit the parties involved before adopting the final Rule.

Best Regards,

Robert L. (Bob) Hamman, President
Small Firm Representative, FINRA District IV Committee

*NASD Notice to Members 96-33, May 1996, Page 238, first paragraph, last sentence

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Edward Jones

RECEIVED
NOV 19 2014
FINRA
Office of the Corporate Secretary

November 12, 2014

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

Re: Regulatory Notice 14-35 – Customer Account Statements

Dear Ms. Asquith:

Edward D. Jones and Co., L.P. ("Edward Jones") appreciates the opportunity to provide comments in response to Regulatory Notice 14-35 regarding FINRA's revised proposal to adopt consolidated FINRA Rule 2231 regarding customer account statements.

Edward Jones is a full-service broker dealer headquartered in St. Louis, Missouri with more than thirteen thousand financial advisors and nearly seven million clients in the United States. Our firm is focused on serving the needs of the serious, long-term individual investor by providing personalized service and promoting an investment philosophy that emphasizes quality and diversification of investments.

I. Overview

Edward Jones supports FINRA's decision to largely transfer unchanged current NASD Rule 2340 and NYSE Rule 409 into the consolidated FINRA rulebook as FINRA Rule 2231. We commend FINRA's recognition that certain types of routine activity which does not involve the active participation of the client should not trigger a monthly account statement delivery obligation.

Edward Jones would like to highlight a couple of issues with new Supplementary Material .02 with respect to the transmission of customer account statements to other persons. We are concerned that that the proposal does not appear to make a distinction between circumstances where a third party is merely being added to an account to receive statements and situations where the client will no longer receive statements. We believe these situations present very different client and compliance risks and, as discussed further below, that additional consideration should be given to the regulatory requirements associated with each of these circumstances.

II. Disabled and Incapacitated Clients

Edward Jones is concerned that the proposed language in Supplementary Material .02 would require the firm to continue to send account statements to a client without exception, even in instances where a client has been determined to be disabled or incapacitated. We are cognizant of the growing challenges in serving senior investors and the potential risk of these investors being exploited by caregivers. The ideal result in these circumstances is for a third party who is duly authorized to act on the behalf of

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Edward Jones

those clients to receive account statements on the account holder's behalf. We do not believe FINRA's investor protection goals would be advanced by requiring the continued delivery of account statements to individuals who are deemed incapacitated when accounts statements are being delivered to a third party who is duly authorized to receive them and to act on the client's behalf. Accordingly, we strongly urge FINRA to consider an exemption from the account statement delivery requirement where the firm has received written documentation verifying the disability or incapacity of the client from a medical professional in circumstances where a third party has been duly authorized to act on behalf of the account holder.

Similarly, we also do not believe clients will be well-served by a requirement forcing delivery of account statements where a competent client has provided written direction requesting statements only be sent to an authorized third party due to, for example, the client's admission into a nursing home or assisted living facility. In those circumstances clients should be able to provide written direction to the firm requesting statements only be sent to the authorized third party.

We respectfully request that FINRA provide limited, well-defined exemptions in this rule to enable firms to take appropriate steps to best serve our clients.

III. Written Authorization to Transmit Account Statements to Other Persons

Contrary to NYSE Rule 409 and NASD Rule 2340, FINRA Rule 2231 proposes requiring all requests to transmit account statements to other persons be provided through written instructions. Edward Jones respectfully submits that when a third party is merely being added to an account a more effective approach would be to require the oral consent of the client combined with a prominent disclosure on the client's account statement highlighting on an ongoing basis that an interested party is also receiving statements on the account. We currently utilize this process and are aware of no past concerns resulting from sending duplicate statements to interested parties.

Should FINRA seek approval of Supplementary Material .02 as proposed, we would respectfully request that the requirements for written authorization of third party copies of account statements be applied prospectively. As noted above, we currently have clients who have instructed us to deliver copies of their statements to third parties without issue or complaint. Given the prominent disclosure on the account statement of the addition of a third party, we believe requiring remediation of existing accounts would impose significant costs and would not provide meaningful additional protection to investors.

IV. Conclusion

Edward Jones appreciates the opportunity to provide comment on proposed Rule 2231. The firm recognizes the significance of this proposal and the critical role account statements play in ensuring investors are well-informed about account activity. We support the objectives of this rule proposal, but hope that further consideration will be given to the potential impact of this proposal on senior investors, particularly those who are disabled and incapacitated.

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Edward Jones

We also respectfully request FINRA given further consideration to the important distinction between adding a third party to an account to receive account statements and directing all account statements to a third party. We believe these circumstances raise significantly different compliance and regulatory risks and trust our comments will help FINRA strike the right balance between investor protection and cost-effective rulemaking.

If you have any questions regarding the comments in this letter please contact me at 314-515-9711.

Sincerely,

Jesse Hill
Government and Regulatory Relations
Edward Jones

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OF COUNSEL
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Via E-Mail and First Class Mail

October 30, 2014

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

Re: Comment on FINRA Regulatory Notice 14-35: Customer Account Statements

Dear Ms. Asquith:

I submit this letter as a comment on FINRA Regulatory Notice 14-35. Malecki Law routinely represents public investors in FINRA's arbitration forum and well understands the incidental impact of FINRA rules, as they play out in the arbitration forum. I have practiced in this area for over 22 years, representing both the industry and investors in arbitration, litigation and regulatory investigations and hearings, as well as being an active member of the *Public Investors Arbitration Bar Association* (PIABA), the *New York County Lawyers Association* (NYCLA) and having been on the *Securities Industry Association* (now SIFMA). I have taught classes at several New York Law Schools, having served as an NASD (now FINRA) and NYSE arbitrator and chairperson and having spoken on several panels and written articles for the *Practicing Law Institute* (PLI), NYCLA and the *Public Investors Arbitration Bar Association* (PIABA).

I write to comment only on the section "Transmission of Customer Account Statements to Other Persons," contained in FINRA Regulatory Notice 14-35.

I support FINRA's efforts to amend the rule to allow customer statements to be forwarded to people other than just holders of a power of attorney on the account. My reasons for supporting the rule come from my concern for aging investors and elder fraud.

As we are all aware and concerned about, the baby-boomer generation is aging and living longer. As a result, we need to worry even more about elder abuse and fraud. Studies show that "Poor Decision Making is a Consequence of Cognitive Decline among Older Person without Alzheimer's Disease or Mild Cognitive Impairment." http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0043647

Elderly Financial Fraud has neurobiological basis, as many seniors are vulnerable to financial exploitation and recommendations of unwise risk-taking. Research has shown that the orbital cortex (OFC) of the brain, where executive functioning capacity is located, can make persons with mild cognitive impairment far less

risk averse than they were before. Dr. Robert Roush, director at the Texas Consortium Geriatric Education Center of the Huffington Center on Aging at Baylor College of Medicine said:

> Normal age-related changes in financial decision making can be exacerbated by neurodegenerative conditions ranging from MCI to some forms of Parkinson's disease. This is why people with fiduciary responsibilities to older people need to know that these conditions can place their patients or clients at greater risk of financial exploitation than otherwise might be the case.

The ability for a family member, tax professional, estate lawyer or trusted friend to be able to obtain copies of statements may be important and crucial to quickly identifying and preventing fraud.

My support, though, is limited, as I believe that the rule should go further and require the member to identify the relationship between the person obtaining the copies and the client, in order to clearly delineate the roles of the respective parties.

First, because of the susceptibilities of the elderly, for example, the member would want to know who may be influencing the client, how they influence them, and why. Under the former NYSE Rule 405 (emphasis added),

> Every member organization was required through a principle executive or a person or persons designated under the provisions of Rule 342(b((1) to **(1) Use due diligence to learn the essential facts relative to** every customer, every order, every cash or margin account accepted or carried by such organization and **every person holding power of attorney over any account accepted or carried by such organization.**

Knowing a power of attorney holder to an account and their relationship with the client has always been important, because anyone with power over the account has an ability to exert influence over what investments are in the account. If someone is receiving statements, they may also be informally in that position of influence, for a good or bad reason. Their relationship to the account holder should be the subject of some due diligence, recorded and considered by the firm in supervision of the account so there is no "speculation" by the firm about that relationship, as well as no question of fact later if there ever were arbitration or litigation. Just as the firm should never speculate as to "other assets" a client may hold, they should not speculate as to who is recommending investments and who is accepting that recommendation. Although only suitable investments should be recommended by the investment professional who is ultimately solely responsible for the recommendations he/she makes, the broker and the firm should know if any transactions or account liquidation ideas generated from the customer side are under the influence of a third party, for a good or bad reason.

Your time and attention to this matter is greatly appreciated.

Very truly yours,

Jenice L. Malecki, Esq.

Wells Fargo Advisors, LLC
Regulatory Policy
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Member FINRA/SIPC

October 30, 2014

Via e-mail: *pubcom@finra.org*

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

RE: Regulatory Notice 14-35: Customer Account Statements – FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)

Dear Ms. Asquith:

Wells Fargo Advisors, LLC ("WFA" or the "Firm") appreciates the opportunity to comment on the proposal by the Financial Industry Regulatory Authority ("FINRA") to adopt consolidated FINRA Rule 2231 *Customer Account Statements*, as set forth in Regulatory Notice 14-35 ("the Proposal").[1] WFA is fully supportive of FINRA's effort to protect sensitive customer information from unauthorized disclosure. Further, WFA appreciates the changes FINRA made to its proposal to maintain the quarterly customer account statement period, which is consistent with current industry practices and rules. WFA submits this letter to outline its views regarding the Proposal.

WFA is a dually registered broker-dealer and investment advisor that administers approximately $1.4 trillion in client assets. It employs approximately 15,189 full-service financial advisors in branch offices in all 50 states and 3,472 licensed financial specialists in

[1] Regulatory Notice 14-35, FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements), (September 2014), http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p600772.pdf

6,610 retail bank branches in 39 states.[2] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. WFA and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, WFA offers access to a full range of investment products and services retail investors need to pursue these goals.

FINRA Should Reconsider the Requirement to Send Duplicate Statements to the Customer

Supplementary Material .02 of the proposed rule would prohibit a member firm from sending account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account unless (a) the customer has provided written instructions to the firm to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; and (b) the firm sends duplicates of such statements or other communications in accordance with this rule directly to the customer either in paper format or electronically. [3]

WFA strongly opposes the requirements outlined in Supplementary Material .02, as such requirements may ironically, in certain instances, increase the risk of disclosure of customer information or fraudulent activity. In circumstances when a customer has reached a diminished mental capacity and cannot manage his or her assets, a third party, typically an agent under a durable power of attorney ("POA"), will assume responsibility to manage the customer's accounts. Similarly, in the case of a springing POA, the client is planning for such a possibility. As currently written, the proposal may prevent a springing POA from becoming operable. Unless the POA document itself serves as the written consent required in the proposal, the person designated to act in lieu of the incapacitated person would be prevented from redirecting account statements and other communications.

Furthermore, customers suffering from diminished mental capacity may be residing in assisted-living or nursing home facilities. WFA recognizes a vast majority of nursing home administrators and personnel are honest and trustworthy. Nonetheless, we believe the industry has experienced several instances where nursing home personnel were able to access customer account information from nursing home residents suffering from diminished mental capacity, resulting in the compromise of customer accounts and theft of customer assets. A growing elderly population will only increase the opportunities for such exploitation. Additionally, numerous WFA customers residing in retirement communities have simply expressed a desire to no longer receive account statements, having appointed an individual as POA to handle their

[2] Wells Fargo & Company is a diversified financial services company providing banking, insurance, investments, mortgage and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC ("WFAFN") and First Clearing, LLC ("FCC"), which provides clearing services to 76 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all brokerage operations.

[3] FINRA Rule 2231, Supplementary Material .02, Transmission of Customer Account Statements to Other Persons, http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/industry/p600766.pdf

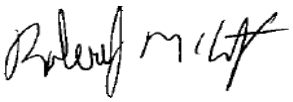
financial matters. Supplementary Material .02 would nonetheless require the Firm to send customer account statements to the client, contrary to the customer's instructions.

Based on the foregoing, WFA believes the requirements outlined in Supplementary Material .02, as currently proposed, do not benefit the customer and may actually increase risk to the customer. A requirement to send customer account statements to a client suffering from diminished mental capacity or where the client explicitly declines to receive account statements will increase the likelihood of client information being compromised, potentially resulting in the customer's financial loss. Thus, WFA opposes the requirements outlined in Supplementary Material .02.

Conclusion

WFA appreciates the opportunity to comment on the Proposal and commends FINRA's efforts to evaluate proposed FINRA Rule 2231 on customer account statements. If you would like to further discuss this issue, please contact the undersigned at robert.j.mccarthy@wellsfargoadvisors.com or 314-955-2156.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy

AUERBACH GRAYSON

October 23, 2014

By e-mail (pubcom@finra.org)

Marcia E. Asqith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, D. C. 20006-1506

Re: Regulatory Notice 14-35

Dear Ms. Asquith:

We appreciate this opportunity to comment on proposed FINRA Rule 2231 (Customer Account Statements). We are a member firm engaged strictly in an agency order execution capacity for institutional investors with settlement by means of receipt against delivery and delivery against payment to third party custodians selected by our customers (RVP/DVP). We do not hold customer funds or securities. We will be materially affected by proposed Rule 2231.

Our concern goes to paragraph 2231(b) and to request for comments items 2 and 5 in Regulatory Notice 14-35.

We recommend that proposed Rule 2231(b) be amended to provide an exemption from the requirement to issue periodic account statements in the case of RVP/DVP customers of a member firm that use a third party custodian selected by the customer that is required to issue periodic account statements to the customer. In such cases periodically issued brokerage firm account statements are duplicative, unnecessary and increase costs for the broker, the customer and the third party custodian. Further, such accounts statements will compel the customer and its custodian to reconcile their records with the statement from the broker and require all three parties to expend additional time and energy and cost on a matter that is already handled through the normal clearance and settlement process. To the extent there is a regulatory concern that customers have information as to the contents and activity in their brokerage account, the statements from the customer's third party custodian will provide that information. This statement will be compared by the institutional investor against the trade comparisons received from the broker to assure that all executed trades have properly settled. This is further heighted by the fact that the customer will receive a confirmation from the broker-dealer that will also be sent to its custodian together with the customer's instruction to accept and pay for the securities purchased or to deliver against payment the securities sold. To the extent that there is a concern that regulators will not be able to see activity in a customer's account, we note that SEC Rule 17a-3 requires the broker-dealer to maintain a record by customer of the transactions for each customer. We could understand if this exception is limited to institutional accounts of member firms.

Auerbach Grayson & Company LLC
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Member Financial Industry Regulatory Authority (FINRA)

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The SEC has recognized this approach in the case of investment advisers. Investment Advisers Act Rule 206(4)-2 permits an investment adviser not to give periodic account statements where the customer has a custody account with a qualified custodian that sends the customer, not less frequently than quarterly, account statements.

Therefore, we suggest that proposed Rule 2231(b) exclude from the rule's requirement a member firm that has a customer RVP/DVP account with a third party custodian authorized by law to hold customer funds and securities where that custodian renders periodic account statements to the customer.

Please feel free to contact the undersigned if you wish additional information or would like to discuss this comment further.

Sincerely yours,

Frank Muller
Managing Director

sifma
Invested in America

November 14, 2014

By Electronic Mail (*pubcom@finra.org*)

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

Re: **Regulatory Notice 14-35, FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)**

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the revised proposal to adopt consolidated Financial Industry Regulatory Authority ("FINRA") Rule 2231 ("Customer Account Statement Proposal" or the "Proposal") that FINRA put forth in Regulatory Notice 14-35. SIFMA understands and fully supports FINRA in its effort to protect sensitive customer information from unauthorized persons. Further, SIFMA greatly appreciates the changes FINRA made to its original proposal to maintain the quarterly customer account statement period, consistent with industry practices and rules. However, SIFMA continues to have significant concerns with the Proposal.

SIFMA's comments below outline the material concerns of members regarding the Customer Account Statement Proposal. Of greatest concern, SIFMA believes that the Proposal's requirement to send duplicate account statements to customers in contravention to the express wishes of a customer or a person with appropriate legal authority over the customer's affairs, while intended to help mitigate investment fraud and related concerns, could potentially result in an increased risk of customers' privacy being violated, account compromises and/or identity theft. The Proposal's potential to erode the legal authority of

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

a person granted a Power of Attorney also deeply concerns SIFMA members. Further, the duplicate account statement requirement outlined in the Proposal would be costly and poses various operational and administrative challenges for firms. Separately, if the Proposal is adopted in any form, SIFMA stresses the need for prospective application, due to material operational challenges, which include persons who have become incapacitated since providing the original instruction to direct mail to a third party, as well as the significant costs associated with remediating hundreds of thousands of account relationships. As such, SIFMA respectfully asks that FINRA amend the Proposal as outlined below.

I. Transmission of Customer Account Statements to Other Persons or Entities

Proposed Supplementary Material .02, Transmission of Customer Account Statements to Other Persons or Entities, provides the following:

> [e]xcept as required to comply with NASD Rule 3050 and Incorporated NYSE Rule 407, a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account unless (a) the customer has provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; and (b) the member sends duplicates of such statements or other communications in accordance with this Rule directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 below;

A. Proposed Rule Supplementary Material .02 – Registered Investment Companies & Advisors

Although SIFMA appreciates that FINRA has clarified that members are not required to obtain the written consent of the customer before sending duplicate statements and other communications pursuant to NASD Rule 3050 and NYSE Rule 407, as stated in previous comment letters, SIFMA believes this exception should be broadened under the same logic to permit members to send duplicates to an employer that is a Registered Investment Company or Registered Investment Adviser, both of which are also required to obtain this information about their associated persons' personal securities dealings pursuant to Rule 17j-1 under the Investment Company Act of 1940 and the provisions of an investment adviser's code of ethics as required by Rule 204A-1 under the Investment Advisers Act of 1940, respectively.

B. Proposed Rule Supplementary Material .02 (b) Significant Duplicate Account Statement Concerns

SIFMA remains concerned about the impact of the new requirement in proposed Supplementary Material .02 (b) requiring members to continue to send account statements and other account communications to the customer directly, even when the customer has provided specific instructions to send such account documentation to a third party or where a third party has otherwise been properly authorized to receive such documents on behalf of the customer. Generally, SIFMA believes that customers should have the power to direct their statements pursuant to their specific instruction, or the specific instruction of a person with the legal authority to act on behalf of the customer. The SEC has also acknowledged the right of a customer to designate a third-party to receive important disclosure information in the context of an Investment Adviser relationship, without the need to deliver duplicates of the information to the client.[2] SIFMA believes that the approach of Incorporated NYSE Rule 409(b) has served both the investing public and the industry well, and FINRA has not established widespread complaints or problems in this area that would justify such a substantial, potentially risky, and costly expansion of account statement delivery obligations. In addition, the cost burden associated with this new requirement would be particularly severe for member firms where customers have not elected to receive electronic account communications.

SIFMA believes that imposing an obligation to send sensitive customer information to the customer's address in all cases may, in fact, increase the risk of a breach of customer confidentiality, privacy or lead to potential fraudulent account activity or identity theft. Importantly, the increased risks of fraud do not end at the customer's mailbox. An account statement or other sensitive information sent to customers who do not want it, even if safely received, still remains a danger to the customer until destroyed. Some examples where these risks are most evident include elderly and/or diminished capacity customers, foreign customers, and high net worth customers, as outlined below.

[2] The SEC, in adopting amendments to the custody rule under the Investment Advisers Act of 1940, recognized that some clients may not wish to receive the custodial reports that an Adviser is required to direct its qualified custodian to send "directly to clients" under the Rule. The SEC included in the amended rule new section (a)(7) that allows for delivery of the required statements and reports to an "independent representative" designated by the client to receive them on the client's behalf. "Independent Representative" is generally defined in Rule 206(4)-2(d)(4) as a person that acts as agent for an advisory client and by law or contract is obligated to act in the best interest of the advisory client and who is not controlled by, under the common control of, or within the past two years, has not had a material business relationship with, the adviser. As this rule is designed to meet the desires of a client that does not want to receive the required disclosures and information, there is no requirement that the client also receive duplicates of the information that is delivered to the designee. (*See* Final Rule Release No. IA-2176 and 17 CFR 275.206(4)-2.)

i. Elderly or Diminished Capacity Clients

An elderly customer moving to, or living in, a care facility or person who has experienced a decline in capacity and cannot regularly receive mail often directs a firm to send account statements and other information directly to a designated third party, as opposed to the care facility or other permanent residence. Permitting the customer in this circumstance to suppress delivery of statements to his or her address of record enhances security of the account by greatly reducing the risk that a third party with fraudulent intent can intercept this sensitive information.

Fraud based on the interception of customer account statements intended for elderly or incapacitated individuals is not just a speculative occurrence, and the concern regarding such fraud forms the basis for many customer requests to firms that mail be sent to third parties whom they know and trust. Preventing broker dealers from following a customer instruction to stop sending mail to their residence in such circumstances will not serve to mitigate risk, but may, in fact, increase the risk compromise of a customers' confidential, personal, and sensitive information.

ii. Foreign Customers

In certain jurisdictions, mail delivery is not secure and poses security concerns for the customer. In the most extreme circumstances, in areas where kidnap for ransom is not uncommon, the display of wealth may endanger the customer and the customer's family.[3] As such, foreign customers with these concerns often appoint a local agent to receive his or her mail. Supplementary Material .04 incorporates Rule 3150, which cites safety and security as an acceptable reason for a "hold mail" request. However, the arrangements described above are not by definition "hold mail" arrangements as the mail is actually delivered to the customer's agent as requested, for further delivery to the client. We note that, while such parties represent trusted "locations" for receipt of mail (as evidenced by the client instruction), these agents do not generally hold a power of attorney ("POA") over the account.

SIFMA maintains that such arrangements should be permitted with written customer instruction. If such arrangements could only be established under a formal POA arrangement, it would pose substantial issues in terms of managing customer expectations, as well as posing substantial implementation challenges. If a customer instruction to hold mail for an acceptable reason is enough to suppress the delivery of statements entirely, a

[3] *Kidnap for Ransom Today*, Catlin Group Limited, October 2012 (available at http://www.catlin.com/flipbook/kidnap-and-ransom-today/files/inc/342692550.pdf)

> As high-profile and wealthy individuals have become more security-conscious, kidnappers in countries like Mexico, Nigeria, India and Pakistan have turned their attention to more accessible victims, including ordinary workers, local merchants, mid-level managers, professional people and government employees. Such local residents remain the favored target of kidnappers and extortion gangs throughout the world. They are more numerous and less well protected. Their abduction tends to receive less police attention, and ransom payments, if smaller, are usually faster.

similar customer instruction to deliver mail directly to a third-party for legitimate and acceptable reasons should also be sufficient. Under such circumstances as described in the example, requiring firms to send duplicate customer account statements and other materials to the account holder would, in most instances, frustrate the purposes underlying the customer's instruction.

iii. High Net-Worth Customers

High net-worth individuals and families often delegate the handling and review of statements and other account materials to trusted advisors in a family office. Many high net-worth customers expressly do not want the sensitive information contained within statements delivered to their homes, as the receipt, control, and destruction of this sensitive information is not a priority for them individually. Further, the frequent travel and multiple residences of many high net-worth customers create unique challenges related to the receipt, control, and destruction of this sensitive information. As such, the requirement to send duplicate account statements to the home of a high net worth customers would serve as a nuisance and potentially drive high net-worth customer to other financial service providers (e.g., custodial arrangements) not subject to these requirements.

C. Power of Attorney and Specific Client Approval

Proposed Rule Supplementary Material .02(b) requires written consent from the customer to send statements to an agent appointed under a POA. The POA relationship is a powerful one, in which a formal legal document drafted and effected pursuant to state law outlines the scope and the limits of an agent's power under the POA. In not allowing the agent or attorney-in-fact to act in the legal capacity specifically granted to them by the customer, SIFMA believes that the Proposal erodes the legal authority of an agent or attorney-in-fact in a manner that may be inconsistent with applicable state laws. Further, the Proposal potentially harms customers for whom the POA is a crucial legal structure for protecting his or her legal rights and finances. The below example outlines one aspect of the potential deleterious effect the Proposal may have if adopted as written.

i. Power of Attorney Example

- Customer A, in consultation with an attorney, executes a POA appointing his daughter, Carey Caregiver, as agent consistent with state law.
- Customer A follows the appropriate process to file the POA with Broker Dealer XYZ, who manages Customer A's account.[4]
- Fifteen years later, Customer A has reached an advanced age where the receipt, control, and destruction of sensitive mailings, such as customer account statements, have become a challenge. Further, Customer A has increasing

[4] SIFMA notes that an agent of a POA may, and often does, file an executed POA with the broker dealer directly, especially in the instances of a person who has experienced a decline in capacity.

health challenges that require home care, giving rise to the danger that a person may intercept her mail and use the information for fraudulent purposes.

- Carey Caregiver, now stepping up to care for her mother, contacts Broker Dealer XYZ to discuss Customer A's account, including the following:
  - Updating Customer A's investment objectives due to her changes health condition;
  - Liquidating certain assets to cover Customer A's increased care; and
  - Directing Customer A's statements to Carey Caregiver, and stopping mailing to Customer A directly to prevent potential fraud.
- If the Proposal is approved as written, Broker Dealer XYZ would follow Carey Caregiver's instructions as to changing investment objectives and liquidating assets, if appropriate under the POA, but not allow Carey Caregiver to re-direct Customer A's statements, as Customer A did not "provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account."

SIFMA believes the requirements of the Proposed Rule undermine and erode the ability of agents and attorneys-in-fact to properly exercise their fiduciary responsibilities, and are inconsistent with the power given agents or attorneys-in-fact under state law. Further, the Proposal's requirements will negatively impact customer plans to address a future where they may require assistance in managing their legal and financial affairs.[5]

ii. Springing Power of Attorney – Additional Challenges.

In addition to the above scenario, a client may create a power of attorney specifically for use only when he or she lacks capacity (a "Springing Power of Attorney") and is therefore unable to provide written consent. This creates a "catch 22" where a person with the power to stand in the legal shoes of an incapacitated person, and perform many other aspects of his or her legal rights, cannot redirect mail away from an address at which an incapacitated person once resided.

A detailed example of the springing POA scenario is as follows:

- Customer B properly executes and notarizes a "springing" POA consistent with state law that gives Randy Responsible the power to act in the place of Customer B should she become incapacitated, and files this POA with Broker Dealer ABC, who manages Customer B's account.

[5] SIFMA understands there is a concern that the person exercising the power granted under the POA may, in fact, be the person who is taking advantage of the customer. However, while SIFMA agrees such situations do exist, SIFMA contends that the vast majority of financial arrangements that include the grant and use of a POA involve conduct consistent with the fiduciary obligations imposed upon the attorney-in-fact and operate consistent with the customer's best interest.

- Customer B is involved in a motor vehicle accident, which causes an incapacitating traumatic brain injury.
- Following the assessment of their personal physician, and with the pre-condition of incapacity met, the springing POA give Randy Responsible the legal power to act in the place of Customer B.
- Randy Responsible, who, pursuant to the grant in the POA, has the power to act in Customer B's account in all other capacities (e.g., place trades, pay bills), seeks to direct Customer B's statements to Randy Responsible's legal office. This is important, as Customer B, recovering from the above traumatic brain injury, is incapable of monitoring and safeguarding her mail, as well as incapable of providing written instruction to re-direct her mail.
- If the Proposal is approved as written, Broker Dealer ABC would not allow Randy Responsible to re-direct Customer B's statements, as Customer B did not "provided written instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account."

In the above scenarios, and others not noted here, the Proposal appears to limit the usefulness of a POA. Many state laws define the powers of an attorney-in-fact or agent under a POA in ways that may potentially conflict with the Proposal. Further, approximately 17 states have laws that outline penalties for financial institutions that refuse to respect the legal standing of a person acting with the authority of a POA. For example, Florida's POA state law outlines penalties for loss that arises from a third person who, in violation of this section, rejects a power of attorney.[6] It is not difficult to envision material loss resulting from fraud the proximate cause of which is a statement sent to a customer in contravention of the direction of the POA agent. As such, the constraints this proposal puts on the agent or attorney-in-fact under a POA conflicts with many state laws and may create legal risk to financial institutions.

D. Statements in Lieu of 10b-10 Confirms

Generally, Rule 10b-10(a) requires that a broker dealer send a written confirmation to a customer that outlines the material elements of a transaction in that customer's account at or before completion of the transaction. SIFMA understands from its discussions with FINRA, that the requirement, under proposed Supplementary Material .02, for firms to send duplicate account statements and other materials to a customer if originals are sent to a third-party, has been drafted to track commentary noted in the SEC's November 10, 1994 Final Rule release 34-34962 announcing the adoption of amendments to Rule 10b-10. Specifically, in its release, the SEC acknowledged that a customer may waive the personal receipt of immediate transaction confirmations—with such confirmations delivered instead

[6] Power of Attorney and Similar Instruments, Fla. Laws title XL, ch. 709, 709.2120(5) (outlining the penalties associated with inappropriately rejecting a legitimate power of attorney, including liability for damages).

to a fiduciary with discretion over the customer's account—under the following conditions:

> [t]he broker-dealer must (1) obtain from the customer a written agreement that the fiduciary receive the immediate confirmation; and (2) send to the customer a periodic report, not less frequently than quarterly, containing the same information that would have been contained in an immediate confirmation. [Citation omitted] The customer may not waive this periodic report.[7]

The stated reason for these requirements was "to ensure that the beneficial owner of the account receive[d] material information needed to verify the transaction in the account." In a footnote to this commentary, the SEC acknowledged comments it received that the requirements regarding delivery of a periodic statement in lieu of immediate transaction confirmations were not consistent with the provisions in then NYSE Rule 409(b).[8] The incorporated NYSE Rule permits firms to send confirmations, customer account statements, or other communications to a non-member person holding power of attorney over a customer account if the firm had received written instructions from the customer to do so, or duplicate copies of the information are sent to the customer at some other address the customer has designated in writing. The SEC did not invalidate the NYSE Rule. Rather, the Commission noted that, "to the extent the rules of … any self-regulatory organization, conflict with the Commission's stated policy, the more restrictive requirement would govern."

As noted above, the SEC requirements are designed to provide material information to a customer. However, in an effort to protect an investor from potential investment fraud, the rigid application of these rules exposes certain customers to potential identity theft and other fraudulent acts. In the 20 years since the SEC made these comments, the world has changed significantly with respect to access to mechanisms for effectuating identity fraud and the capabilities of those who are intent to do so. SIFMA believes that FINRA should adopt a rule for statement delivery that is reasonable in light of the customer concerns already noted in this letter. Specifically, a rule that would meet customers' desires to protect themselves from potential financial abuse, or who simply prefer that someone else receive and review their statement information, irrespective of any potential conflict with Rule 10b-10.

Importantly, FINRA has a "know your customer" rule that imposes upon member firms a requirement to not only know their customer but to also know essential facts about anyone who has authority over a customer's account. The "know your customer" rule can serve to mitigate concerns that a customer might be taken advantage of by an individual who has authority over his/her financial affairs. Member firms are also required to have reasonable procedures to identify and react to "red flags" that might indicate the occurrence of

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[7] Securities and Exchange Act Release No. 34–34962 (November 9, 1994), 60 FR 59612.
[8] *Id.* at note 36.

potential fraud. There are no sure-fire methods for totally eliminating the greed that leads to financial abuse and neither the requirements of 10b-10, or NYSE Rule 409(b), have successfully prevented financial crimes from occurring. Neither will proposed Rule 2231, whether it is adopted as proposed or modified consistent with this comment letter or any other comments FINRA receives. However, FINRA should allow broker dealers to honor a customer's legitimate concern, or the concerns of those charged with their care, that sensitive financial information not be sent directly to the customer, especially when doing so will help prevent potential financial abuse.

From a customer protection perspective, SEC Rule 10b-10 and proposed FINRA Rule 2231 are, in large part, rules of "disclosure," which require broker dealers to keep a customer informed regarding the material aspects of his or her account. Disclosure only protects a customer to the extent a customer is competent, capable of, and willing to review the information that has been disclosed. If the customer is not one or all three of these, disclosure may cease to be informative, protective or curative and may, instead, lead to material harm. As such, a customer, or person with legal authority to act on behalf of the customer, should have the power to direct a broker dealer to disclose important information to someone they trust and whom they believe has the competence, capability, and willingness to act in his or her best interest. In such circumstances, rules that require broker dealers to burden customers with the receipt, control, and destruction of statements and other sensitive information do not work in the best interest of the customers, but instead provide opportunity for those who could do them harm.

To the extent FINRA's final rule remains less restrictive than the requirements of SEC Rule 10b-10, firms would still be required to comply with the SEC rule until such time as the SEC provided more flexibility in its requirements to account for legitimate customer concerns.[9] On this point, SIFMA plans to seek out interpretive guidance from the SEC that provides firms the flexibility to mitigate the identity theft and fraud risks to customers.

E. Alternative to Written Consent Process

In circumstances where customers wish to continue to receive statements and also direct duplicates to a third party, unlike above, SIFMA members strongly prefer the operational flexibility to allow customers to orally direct a firm to send statements to a third party, with appropriate ongoing documentation of that direction. Specifically, where a customer orally directs a firm to send statements to a third party, the Rule should allow for acceptance of the customer instruction with subsequent and ongoing notice to the customer of the changes. For example, this confirmation could consist of including the third party's

[9] Interestingly, if the proposed rule is adopted by FINRA as written, it will be the more restrictive rule as applied to the delivery of account statements in connection with the custody of advisory accounts. As noted in footnote 2, duplicate statements are not required to be sent to customers when a designee has been appointed under Rule 206(4)-2 OF THE Investment Advisers Act of 1940. The FINRA rule would, however, require the delivery of duplicate statements.

identity prominently on the statements to the customer going forward. This process would be consistent with current practice, and would prevent the operational challenge of obtaining written consent in instances where written consent is impracticable.

Separately, DVP/RVP[10] accounts generally instruct broker dealers to suppress statements orally, as DVP/RVP customers closely monitor their account activity, making the summary statements superfluous. Firms often follow up this oral request to suppress statements with a confirmation and notice process. Permitting firms to continue this confirmation and notice process following a verbal request for DVP/RVP accounts would be consistent with current practice, and would similarly prevent the operational challenge of obtaining written consent**.**

F. Alternative Proposed Rule 2231.02 Text

For the reasons outlined in the above sections, SIFMA respectfully requests that FINRA either delete Supplementary Material .02 (b) from the proposed rule, or model proposed Supplementary Material .02 after the requirements of Incorporated NYSE Rule 409(b) for accounts over which the customer has provided a power of attorney, and set out the requirements of .02(a) and (b) disjunctively replacing "and" with "or," thus providing firms with greater flexibility to comply with the Rule. If FINRA were to accept this approach, Supplementary Material .02 could be revised to read:

> Except as required to comply with NASD Rule 3050, Incorporated NYSE Rule 407, Rule 17j-1 under the Investment Company Act of 1940, and the provisions of an investment adviser's code of ethics as required by Rule 204A-1 under the Investment Advisers Act of 1940, a member may not address or send account statements or other communications relating to a customer's account to other persons or entities or in care of a person holding power of attorney over the customer's account, unless (a) the customer has provided specific instructions to the member to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer's account; *or* (b) the member continues to send duplicates of such statements or communications in accordance with this Rule, directly to the customer either in paper format or electronically as provided in Supplementary Material .03 below. For the purposes of Supplementary Material .02, a "customer" includes a person with the legal authority to act on behalf of an accountholder, including, but not limited to, a person holding a Power of Attorney, a court appointed guardian or conservator, or a person with similar legal authority;

[10] Receipt Versus Payment (RVP) services allow an institutional seller to require cash payment before delivering its securities at settlement. Delivery Versus Payment (DVP) services allow an institutional buyer to pay for its purchased securities only when the securities are delivered. Generally, firms only extend RVP/DVP privileges to their institutional customers.

This simple change would permit member firms to continue to honor the requests of their customers and those with appropriate legal standing on behalf of their customers to direct account communications to a trusted adviser or attorney-in-fact and avoid the additional costs and potential account security concerns associated with sending account communications to the customer's address of record, even when the customer, or a person with the legal authority to act on behalf of the customer, has designated a third party to receive them.

G. Prospective Applicability

If, however, FINRA seeks approval for Supplementary Material .02 in any form, SIFMA strongly urges FINRA to make clear that the Rule only has prospective application and does not apply retroactively, thereby permitting firms to continue to rely on oral instructions provided by customers under the current regulatory regime prior to the Rule's effective date. This would avoid the burdensome exercise of reviewing and "remediating" existing accounts for which written instructions to address account statements and other account communications to a third party may not have been received, or for which duplicate statements are not sent to customers who have provided written instructions that their statements be sent to third parties in their place, both in reliance upon and in accordance with Incorporated NYSE Rule 409(b). A SIFMA firm with approximately 7.4 million accounts provided a cost estimate of over 14 million dollars just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02. These costs do not include the staffing and technology costs associated with such remediation, which would be substantial. As such, SIFMA firmly believes that imposing such a regulatory cost on member firms is not warranted in this case where no evidence has been presented that the current regulatory regime has been anything less than effective.

H. Clearing Firm Reliance on Introducing Brokers

SIFMA would like clarity regarding the Proposal's obligation to obtain written authorization from a customer regarding the mailing of statements to a third party, and the ability of a clearing firm to rely on introducing brokers in asserting the authenticity of a written approval. As an introducing broker generally retains the "know your customer" requirements regarding, among other things, activity in customer accounts, introducing brokers are better suited to assess the authenticity of requests from customers to direct mail to a third party.

Additionally, SIFMA asks that FINRA bring to the attention of introducing firm members the impact of the proposed rule change on their obligations. In particular, introducing firms are in the best position to know the customer and, as long recognized through contract and in practice, and as permitted under FINRA Rule 4311, introducing firms are typically allocated the responsibility for opening accounts as well as maintaining and updating customer addresses, which ultimately drives the delivery of account statements.

I. Other Communications

As stated in our previous comment letter, read broadly, the proposed Rule 2231 Supplementary Material .02 requirement for sending of duplicate copies of "other communications" to customers could encompass a myriad of operational communications with third parties (e.g., custodians, issuers and transfer agents, counterparties to trades, banks in connection with disbursement and deposits and a member firm's own vendors) where firms need to send "communications" about a customer's account in order to provide the services requested for the customer. SIFMA seeks clarity from FINRA regarding the scope of "other communications" in the context of proposed Rule 2231 Supplementary Material.02(b), including examples of the type of communications FINRA would consider "other communications."

J. Householding of Customer Statements

When two or more customers share the same address firms often combine all account statements for the same address in a single envelope that is addressed to one of the members of the household. This process, generally known as "householding" is generally outlined in customer account agreements. Firms offer customers the ability to opt out of the bundling of statements if he or she desires through a request for separate statements. SIFMA believes that, pursuant to the current practice, in place for as long as many firms have records, the firm does not require written or verbal authorization to put one family member's account statement in the same envelope addressed to another, such as a spouse. Changing this long-standing practice would cause significant disruption in the current statement process. For example, in a household where 2 spouses have individual accounts, IRAs, a joint account, and separate trusts, firms would see those as 7 different account holders who would have to be named. As such, SIFMA would like to confirm that under the Proposal, unless a customer requests otherwise, a firm may combine account statements for accounts of two or more customers sharing the same address in the same envelope addressed to one member of the household.

K. Address Change Confirmation

In the event FINRA were to adopt Supplementary Material .02 as proposed, SIFMA believes FINRA should clarify in new Supplementary Material, rule release commentary, or an adopting regulatory notice that while firms must continue to comply with SEC and FINRA rules regarding confirmation and supervision of address changes, consolidated Rule 2231 does not create any additional obligation to validate a new address is that of the customer's beyond the existing requirements of SEC Rule 17a-3(a)(17)(B)(2), which requires notification of an account address change be furnished to the old account address, and NASD Rule 3012(a)(2)(B)(ii),[11] which requires reviews of changes to account information including address changes.

[11] To be consolidated under FINRA Rule 3110(c)(2)(A)(v), effective December 1, 2014.

L. Consent from Multiple Accountholders

In the event FINRA were to adopt Supplementary Material .02 as proposed, SIFMA believes FINRA should accept the specific consent of one accountholder on a joint account to send statements to a third party, provided the accountholder making the request is not seeking to suppress customer account statements to the original accountholders. To require all accountholders to consent in such circumstances would pose a significant operational challenge with no offsetting regulatory benefit.

II. DVP/RVP ACCOUNTS

Proposed FINRA Rule 2231(b) provides that account statements need not be sent to a customer pursuant to proposed FINRA Rule 2231(a) if, among other conditions, the "customer" consents to the suspension of such statements in writing. SIFMA wishes to confirm that members may treat an institutional customer trading pursuant to discretionary authority in the DVP/RVP account or the authorized person or institution that opened the account as the "customer" for these purposes and collect and maintain the consents from such institutions, instead of the underlying customers.

III. Use of Logos, Trademarks, etc.

Generally, Proposed FINRA Rule 2331 Supplementary Material .07 outlines that logos, trademarks and other similar identification of a person should not be used on a customer statement "in a manner that is misleading or causes customer confusion." SIMFA members request that FINRA provide additional clarity as to what FINRA may consider as "misleading" or causing "customer confusion." SIFMA members would greatly appreciate specific examples of what does, and what does not, constitute logo use that may "mislead" or cause "customer confusion."

IV. Use of Third Party Agents

FINRA proposes to delete and not transfer over the NYSE's Rule Interpretation 409.03 to FINRA Rule 2231, which requires a written undertaking to the NYSE representing certain conditions are satisfied when using third party agents to prepare and/or transmit customer account statements. SIFMA supports the removal of this requirement and requests that FINRA confirm in rule release commentary or an adopting regulatory notice that conditions in 409.03 no longer apply but that firms may continue to rely on 409.03 for pre-existing agreements that utilize Third Party Agents.

V. Specific FINRA Questions Outlined in Regulatory Notice 14-35

A. FINRA Request for Comment

Q1. Does the revised proposal to retain the quarterly delivery requirement address the operational and cost concerns commenters raised about the proposed monthly delivery requirement in the initial filing?

SIFMA greatly appreciates FINRA moving away from monthly statement requirements, and this does address the portion of the potential costs outlined in our previous comments related to monthly statements only. However, the current Proposal does not mitigate the material costs to SIFMA members regarding the system, process and technology changes necessary to comply with Supplementary Material .02 if adopted as proposed.

Q3. What impact will proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons) have on existing practices with respect to the transmission of account statements and other documents to third parties?

As outlined above, the material impact to firm practices of proposed Supplemental Material .02 will result from the requirement to send duplicate account statement to customers and the inability of firms to rely on the direction from the customer, or a person with the legal standing to act on behalf of the customer, when directing statements away from a customer's address.

Q5. Should the proposed rule include specific exemptions that would allow firms not to send account statements to customers under identified situations?

Yes. If duplicate statements will be required, FINRA should recognize that there are instances where the customer's best interests are better served by not forcing delivery of account statements to them. However, as outlined above, SIFMA believes that the proposed rule should not include the requirement to send duplicate account statements to a customer. Where other rules might require such delivery, such as the requirements under SEC Rule 10b-10(a) regarding confirms, FINRA and its member firms must defer to the SEC rule. SIFMA plans to advocate for common sense customer account delivery standards for mitigating identity theft and fraud where necessary. This advocacy will occur at the federal level, and the inclusion of restrictive language in the FINRA rule will frustrate this effort.

B. FINRA Request for Economic Impact

Q1. What direct and indirect costs will result from proposed Supplementary Material .02?

Direct costs include, but are not limited to, additional postage printing, and mailing expense where mailing duplicate customer account statements and other materials. Should the Proposal's requirements be retroactive, the costs to remediate customer accounts with mail relationships already in place would be substantial. A SIFMA firm with approximately 7.4

million accounts provided a cost estimate of over 14 million dollar just for the postage and mailings associated with the nearly 2.2 million accounts potentially impacted by the prospective application of proposed Supplementary Material .02. These costs do not include the staffing and technology costs associated with such remediation, which would be substantial.

Indirect, but material costs include the fraud that will likely arise from identity theft and fraud where duplicate customer accounts are sent to customers against his or her request or the request of a person with the legal authority to act on behalf of the customer. In addition to the fraud concerns, the Proposal may have a material negative impact on the client experience, and serve to drive clients to advocacy models without this rigorous duplicate disclosure requirement.

Q2. Are the costs imposed by proposed Supplementary Material .02 warranted by the potential protection to customers from receiving duplicate account statements?

SIFMA members do not believe the "potential protection to customers from receiving duplicate account statements" outweighs the increased risk to customers of theft, fraud, and abuse where sending duplicate statements is contrary to the direction of a customer or a person with an appropriate legal authority (e.g., an agent granted authority under a POA).

Q3. What benefits or burdens would result for customers from proposed Supplementary Material .02?

SIFMA is unable to identify appreciable benefits that arise from the changes to existing practices outlined in Supplementary Material .02. Conversely, the proposal as written will significantly increase costs associated with consent and mailings (e.g., postage and printing). Further, customers bear the burden of receipt, control, and destruction of materials that have instructed firms not to send to their address.

Q4. What impact, if any, would proposed Supplementary Material .02 have on business practices and competition in the financial industry?

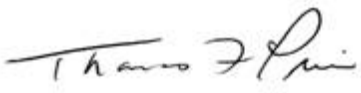
As outlined above, in the context of high-net-worth customers, the requirement to send duplicate account statements to the home of a high net worth customers would serve as a nuisance and potentially drive high net-worth customers to other financial service providers (e.g., custodial arrangements) not subject to these requirements.

VI. CONCLUSION

The Securities Industry and Financial Markets Association ("SIFMA") appreciates the opportunity to comment on the Customer Account Statement proposal the Financial Industry Regulatory Authority ("FINRA") put forth in Regulatory Notice 14-35. As outlined above, SIFMA continues to have material concerns about the Proposal. Of particular concern, it is SIFMA's belief that there are circumstances, some detailed in this comment, where the requirements of Supplemental Material .02 as proposed do not operate in the best interest of customers.

If you have any questions or require further information, please contact the undersigned at (212) 313-1260.

Sincerely,



Thomas F. Price
Managing Director
Operations, Technology & BCP

cc: Kris Dailey, Vice President, ROOR, FINRA
Kosha Dalal, Associate Vice Pres. and Associate General Counsel, OGC, FINRA

Exhibit 5

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

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FINRA Rules

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1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

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IM-1013-1. Membership Waive-In Process for Certain New York Stock Exchange Member Organizations

This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange ("NYSE") member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). It applies to firms that, as of July 25, 2007, (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together "NYSE-only member organizations"), provided that such firms were not also NASD members as of July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to the Department of a signed waive-in membership application ("Waive-In Application") with the following information:

(1) through (5) No Change.

(6) Representations that the NYSE applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

The Department shall review the Waive-In Application within three business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and FINRA rules, other than FINRA Rules 1011 through 1016, 1019 through 1021, [2231,] 3260 and 4540, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities"). If an NYSE-only member organization admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to Rule 1017. Upon approval of such business expansion, the firm shall be subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and all FINRA rules.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to

Schedule A of the FINRA By-Laws.

IM-1013-2. Membership Waive-In Process for Certain NYSE American LLC Member Organizations

This Interpretive Material sets forth a membership waive-in process for certain NYSE American LLC ("NYSE American") member organizations to become members of FINRA as part of the acquisition by NYSE Euronext of the Amex Membership Corporation. It applies to any NYSE American member organization that (i) holds a valid 86 Trinity Permit as of the date such firm transfers its equities operations to the NYSE American Trading Systems and (ii) is not currently a FINRA member. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE American in registration categories recognized by FINRA upon submission to the Department of a signed waive-in membership application ("Waive-In Application") with the following information:

(1) through (5) No Change.

(6) Representations that the NYSE American applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

The Department shall review the Waive-In Application within three business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be member organizations of both NYSE and NYSE American and as such are subject to FINRA rules (provided that firms admitted to FINRA membership under IM-1013-1 also are subject to FINRA rules), other than FINRA Rules 1011 through 1016, 1019 through 1021, [2231,] 3260 and 4540, the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and the FINRA Rule 8000 and Rule 9000 Series, provided that their NYSE or NYSE American securities business is limited to floor-based activities in either NYSE-traded or NYSE American-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE American floor business under NYSE Rule 70.40 or NYSE American Equities Rule 70.40 ("permitted floor activities"). If a firm admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm must apply for and receive approval to engage in such business activity pursuant to Rule 1017. Upon approval of such business expansion, the firm shall be subject to the FINRA By-Laws and Schedule to By-Laws, including Schedule A, and all FINRA rules.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2230. Customer Account Statements and Confirmations

2231. Customer Account Statements

(a) General

Except as otherwise provided by paragraph (b) of this Rule, 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 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. 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 account statements need not be sent to a customer pursuant to paragraph (a) of this Rule if:

(1) [t]The customer's account is carried solely for the purpose of execution on a DVP/RVP basis;

(2) [a]All transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 11860;

(3) [t]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) [t]The customer consents to the suspension of such statements in writing. The member must maintain such consents in a manner consistent with Rule 4512 and SEA Rule 17a-4;

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

(6) [t]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 SEA Rule 15c3-3(j)(1) concerning quarterly notices of free credit balances on statements.

(c) No Change.

(d) Definitions

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

(1) "[a]Account [a]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] "[g]General [s]Securities [m]Member" refers to 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). 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) "[d]Direct [p]Participation [p]Program" or "[d]Direct [p]Participation [p]Program [s]Security" refers to the publicly issued equity securities of a direct participation program as defined in Rule 2310 (including limited liability companies), but does not include securities listed on a national securities exchange or any program registered as a commodity pool with the Commodity Futures Trading Commission.

(4) "[r]Real [e]Estate [i]Investment [t]Trust" or "[r]Real [e]Estate [i]Investment [t]Trust [s]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 listed on a national securities exchange.

(5) "[a]Annual [r]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]refers to 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) No Change.

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

.01 Compliance with Rule 4311 (Carrying Agreements). Members are reminded of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2) that generally requires each carrying agreement in which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.

.02 Transmission of Customer Account Statements to Other Persons or Entities

(a) Except as provided for in paragraph (b) of this Supplementary Material, a member may not send account statements relating to a customer's account(s) to other persons or entities unless:

(1) the customer has provided written instructions to the member to send the statements to such person or entity; and

(2) the member continues to send accounts statements directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 of this Rule.

(b) Where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on behalf of a customer, a member may cease sending account statements to the customer upon written instructions from such court-appointed fiduciary provided that the court-appointed fiduciary furnishes to the member an official copy of the court appointment that establishes authority over the customer's account(s).

(c) Notwithstanding paragraph (a) of this Supplementary Material, a member may provide duplicate customer account statement(s) under Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rule.

.03 Use of Electronic Media to Satisfy Delivery Obligations. A member may satisfy its 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.

.04 Compliance with Rule 3150 (Holding of Customer Mail). A member is permitted to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.

.05 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.

.06 Assets Externally Held. Where a customer account statement includes assets that the member does not carry on behalf of the customer and that are not included on the member's books and records, such assets must be clearly and distinguishably separated on the statement. The statement must:

(a) Clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer;

(b) 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

(c) Identify that such externally held assets may not be covered by SIPC.

.07 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 that is misleading or causes customer confusion.

.08 Use of Summary Statements. Where a member holds a customer's account and another person(s) who separately offers financial related products or services to the same customer (e.g. mutual fund sales and custodial services, banking products and services, insurance products and services, securities products and services, etc.) seek to jointly provide 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) In the summary statement:

(1) indicate that the summary statement is provided for the customer's convenience and includes assets that may not be held by the broker-dealer;

(2) indicate that the summary statement does not replace any other statement(s) the customer may receive from other financial institutions that hold

the customer's assets;

(3) 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 firm, carrying firm, fund distributor, banking or insurance product provider, etc.);

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

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

(6) identify each entity that is a member of SIPC;

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

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

(d) Ensure that there is a written agreement between the clearing firm and each other person jointly providing its respective customer account statements attesting that each such person has developed procedures and controls for reviewing and testing the accuracy of the information included on its respective statements; and

(e) Ensure that the summary statement complies with Rule 2231.

* * * * *

Temporary Dual FINRA-NYSE Member Rules

* * * * *

[Rule 409T. Statements of Accounts to Customers]

[(a) 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 409T(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 Exchange 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 SEA Rule 17a-4;]

[(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 SEA 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) 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) Rescinded October 6, 1978. (See SEA Rule 10b-10).]

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

[(e) 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 Exchange 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) Reserved.]

[(g) 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 Exceptions to Rule 409T(b)]

[The provisions of Rule 409T(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 supervisor of a member organization, 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 travelling or (b) not be exceed three months if the customer is going abroad.]

* * * * *

Temporary Dual FINRA-NYSE Member Rule Interpretations

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[Rule 409T. Statements of Accounts to Customers]

[(a)]

[/01 Reserved.]

[/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 service[1];]

[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 409T(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 agreement approved by the Exchange in accordance with Exchange 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 combing 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]]

[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 409T and all interpretations thereof.]

[(b)]

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

[The Exchange will consider written requests from member organizations 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 409T(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 Exchange 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 409T(b)(2) shall be made available to the customer for review at all times and at no special cost.]

[[1] The SEC has stated that under the SEA 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.]

[[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.]

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