Regulatory Notice 26-03

Negative Consent

Reducing Burdens and Providing Guidance on the Use of Negative Consent for the Bulk Transfer or Assignment of Customers' Accounts

Summary

In general, a member must obtain a customer's affirmative consent or instruction to transfer or assign the customer's account to another member. However, for large bulk transfers of customer accounts, obtaining affirmative customer consent to such transfers or assignments may sometimes be unworkable. Thus, in some situations, members seek to transfer customer accounts by sending letters to their customers that their accounts will be transferred unless a customer expressly objects to the transfer of his or her account (negative consent). FINRA has previously stated its view that the use of negative consent to transfer or assign customers' accounts may be appropriate in some bulk transfer circumstances.

In furtherance of the FINRA Forward initiative to support member compliance, this *Notice* reduces unnecessary burdens by eliminating the current practice of submitting draft letters for the use of negative consent to FINRA staff for review and obtaining FINRA staff's "no objection" prior to sending the letter. In addition, the *Notice* consolidates guidance FINRA previously issued regarding the use of negative consent and provides members with effective practices to help guide their use of negative consent in future bulk transfers or assignments.

This *Notice* does not create new legal or regulatory requirements, or new interpretations of existing requirements, nor does it relieve firms of any existing legal or regulatory obligations. Members may consider the information in this *Notice* in developing new, or modifying existing, practices that are reasonably designed to achieve compliance with relevant regulatory obligations based on their size and business model.

Questions concerning this *Notice* should be directed to:

- Afshin Atabaki, Vice President and Associate General Counsel, Office of General Counsel (OGC), at Afshin.Atabaki@finra.org or (202) 728-8902;
- Kris Dailey, Vice President, Office of Financial and Operational Risk Policy, at Kris.Dailey@finra.org or (646) 315-8434; or
- Ilana Herscovitz Reid, Associate General Counsel, OGC, at Ilana.Reid@finra.org or (202) 728-8268.

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Notice Type

- Guidance

Suggested Routing

- Advertising
- Institutional
- Legal
- Operations
- Registered Representatives
- Risk
- Senior Management
- Systems
- Trading
- Training

Key Topics

- Bulk Transfers
- Negative Consent

Referenced Rules & Notices

- FINRA Rule 1017
- FINRA Rule 2010
- FINRA Rule 2210
- FINRA Rule 2273
- FINRA Rule 3160
- FINRA Rule 3260
- FINRA Rule 11870
- Notice to Members 92-11
- Notice to Members 02-57
- Notice to Members 04-72
- Regulatory Notice 15-22
- Regulatory Notice 16-18
- Regulatory Notice 25-07
- Exchange Act Rule 15c3-3
- Regulation S-P

Background & Discussion

FINRA is committed to modernizing its rules and guidance and empowering member compliance.[1] This *Notice* supports those initiatives by consolidating guidance FINRA has issued, reducing unnecessary burdens, and providing members with effective practices regarding the use of negative consent in bulk transfers or assignments.

Over time, members have sought to transfer or assign customers' accounts in bulk for various reasons, including when members are leaving the business or ceasing a particular line of business.[2] Also, after introducing firms have ceased business without transferring customers' accounts, clearing firms have sought to assign the customer accounts to other introducing firms on the clearing firms' platforms. Obtaining affirmative customer consent to these transfers or assignments sometimes is unworkable, so many firms have sought to transfer or assign customers' accounts using negative consent. In such situations, FINRA believes the use of negative consent may be appropriate in limited circumstances to transfer or reassign accounts in bulk. Typically, such situations are driven by a change in a firm's operations or business model and use of negative consent will enhance efficiency and minimize disruptions to customer account access. Under certain circumstances, however, FINRA has stated that transfers of customers' accounts by a member using negative consent may conflict with a member's obligation to observe high standards of commercial honor and just and equitable principles of trade.[3]

In *Regulatory Notice 25-07* (April 2025), FINRA requested comment on modernizing its rules, guidance and processes for the organization and operation of member workplaces, including specifically requesting comment regarding members' use of negative consent to transfer or assign customers' accounts. Several comments addressed this topic.

In light of the comments, FINRA issues this *Notice* to provide guidance regarding the use of negative consent to transfer or assign accounts. FINRA believes this *Notice* will help members whose business models and practices are rapidly evolving, and customers who need improved transparency and awareness of potential changes to their accounts and the opportunity to experience as seamless a transition as possible.

Consolidated Guidance Regarding Situations in Which a Member May Rely on Customer Negative Consent to Effectuate a Bulk Transfer or Assignment of Accounts

As discussed previously, members generally are required to obtain a customer's affirmative consent or instruction to transfer or assign a customer's account to another member. Transferring accounts without customer consent could conflict with a member's obligation to observe high standards of commercial honor and just and equitable principles of trade under FINRA Rule 2010.[4]

For individual account transfers, FINRA Rule 11870 (Customer Account Transfer Contracts) describes the process by which a customer can transfer his or her account from one member (the carrying firm or delivering firm) to another (the receiving firm). In general, the process requires the customer to submit a completed transfer instruction to the receiving firm and sets forth specific procedures pursuant to which the receiving firm and carrying firm coordinate their efforts to accomplish the transfer. Most account transfers occur through the Automated Customer Account Transfer Service (ACATS), an electronic transfer system developed by the National Securities Clearing Corporation (NSCC) to automate and standardize the transfer of accounts. Members generally are also required to obtain a customer's affirmative consent to assign the customer's account to another member where the customer's account assets are not being transferred (*e.g.*, to assign the brokerage relationship from one introducing firm to another while the account assets remain at the same clearing firm).

As previously referenced, FINRA believes the use of negative consent may be appropriate in limited situations to transfer or assign customer accounts to another member in bulk. As noted above, using negative consent can enhance efficiency and minimize disruptions to customer account access, especially in situations where obtaining affirmative customer consent is unworkable due to immediate circumstances beyond a member's control.

FINRA previously published guidance on the use of negative consent to transfer customers' accounts from one member to another in *NTM 02-57*. *NTM 02-57* also addresses the use of negative consent in situations involving a change in brokerage relationship without an underlying transfer of accounts, such as an assignment of customers' accounts to a new introducing broker-dealer without a change in clearing firm.

Since the publication of *NTM 02-57*, FINRA staff has engaged with members regarding the use of negative consent in various other situations. The following is an illustrative, not exhaustive, list of some of the situations where negative consent has been used to transfer or assign customers' accounts:

- an introducing firm that has entered into one or more clearing arrangement(s) with one or more different clearing firm(s) is seeking to transfer some or all of its customer accounts to the new clearing firm(s);
- an introducing firm or a clearing firm that is going out of business—including, but not limited to, because of financial or operational difficulties—is seeking to transfer all of its customer accounts, including in the case of a clearing firm all of the accounts carried by such clearing firm, to one or more introducing firm(s) or clearing firm(s);

- an introducing firm or a clearing firm that is divesting itself of a specific business line or area (*e.g.*, retail brokerage business) is seeking to transfer the affected customer accounts to one or more introducing firm(s) or clearing firm(s);
- following the conclusion or termination of a clearing relationship between a clearing firm and an introducing firm, including where the introducing firm has gone out of business, the clearing firm is seeking to assign customer accounts that were not transferred by the original introducing firm to one or more other introducing firms with which the clearing firm has a relationship;
- a firm that is acquired by or merged with one or more other members is seeking to transfer all of its customer accounts to the new firm or firms;
- upon the conclusion or termination of a networking arrangement between a firm and a financial institution pursuant to FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions), the firm is seeking to transfer some or all customer accounts established under the arrangement to one or more new firm(s) with which the financial institution has formed a networking arrangement pursuant to Rule 3160, as directed by the financial institution;
- upon the conclusion or termination of an arrangement relating to an employee equity compensation plan or employer-sponsored retirement plan between a firm and an employer, the firm is seeking to transfer all customer accounts established under the arrangement to a new firm with which the employer has formed an arrangement, as directed by the employer;[5] and
- to change the broker-dealer of record on directly held accounts in specified situations.[6]

Reducing Unnecessary Burdens Related to FINRA Staff's Review of Draft Letters

Following the guidance in *NTM 02-57*, members developed the practice of submitting draft letters for the use of negative consent to FINRA staff for review.[7] The staff would then review the draft letters to determine whether the letter includes information and disclosures consistent with *NTM 02-57*, and where appropriate, inform members that the staff has "no objection" to the use of the letter for the transfer or assignment of accounts.

However, FINRA has learned from experience and member feedback that this practice may impose unnecessary burdens, especially in situations where a transfer or an assignment of customers' accounts is necessary for urgent business reasons under time constraints. To reduce those potential burdens, and with this *Notice* as a resource, FINRA intends to discontinue that prior review process. This change will become effective on April 1, 2026.

Thus, where appropriate under the circumstances, members may use such letters without obtaining the staff's "no objection" to the proposed transfer or assignment of customers' accounts by negative consent. FINRA staff will continue to provide interpretive guidance upon request regarding new or novel situations outside the scope of those discussed below.[8] Furthermore, through its examination process, FINRA will continue reviewing member's use of negative consent in transferring and assigning accounts.

Effective Practices, Minimum Disclosures and Other Considerations for Members Using Negative Consent

To facilitate member compliance,[9] FINRA sets forth, below, effective practices for the use of negative consent to effect a bulk transfer or assignment of accounts. This guidance is generally based on the recommended minimum disclosures listed in *NTM 02-57* and the staff's experience reviewing the use of negative consent. It is not intended to impose any new obligations on members.

(A) Customer Authorization

FINRA reminds members of the importance of obtaining customers' prior written authorization to make changes to their accounts by negative consent.[10] Members may consider obtaining such authorization during the client onboarding process, for instance, in an account opening agreement.[11]

With such authorization, members may reasonably determine that the use of negative consent to transfer or assign customers' accounts in bulk to another member is appropriate in situations similar to those listed above.

(B) Compliance with Regulatory and Legal Requirements

Various regulatory and legal requirements may apply to the use of negative consent for the bulk transfer or assignment of customers' accounts. While the requirements noted here are not exhaustive, FINRA reminds members to ensure that the transfer or assignment is consistent with all applicable laws, rules and regulations. For example, if required under FINRA Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations), a member must file a Continuing Membership Application (CMA) with FINRA with respect to the proposed transfer or assignment and satisfy the applicable requirements in conjunction with the transfer or assignment.[12] Likewise, letters that constitute retail communications would be subject to applicable content standards of Rule 2210 (Communications with the Public). Another applicable regulation is Regulation S-P, which governs the protection of financial and personal customer information.[13] Other laws, rules and regulations may apply depending on the nature of the account, such as investment advisory accounts and retirement accounts. In addition, other legal and contractual obligations may apply.[14]

(C) Free Credit Balances and Sweep Programs

A transfer of accounts may involve the transfer of free credit balances in the accounts of customers at the delivering firm to the receiving firm, including a transfer of free credit balances that results from the liquidation of products in a sweep program.[15] In these instances, the delivering and receiving firms may rely on the letters that were used to effect the bulk transfer of customers' accounts via negative consent to transfer the free credit balances, provided that the transfer is consistent with Exchange Act Rule 15c3-3(j) and the guidance issued by Securities and Exchange Commission (SEC) staff.[16]

In addition, a transfer of customers' accounts may result in a change in sweep program offerings available to customers where the receiving firm offers different sweep program products than those offered by the delivering firm. In such situations, the receiving firm may also rely on the letters that were used to effect the bulk transfer of customers' accounts via negative consent to immediately reinvest customers' free credit balances in products (either a money market mutual fund or an FDIC-insured bank deposit account) offered through its sweep program, provided that the reinvestment is consistent with Exchange Act Rule 15c3-3(j) and the guidance issued by SEC staff.[17] In particular, Exchange Act Rule 15c3-3(j)(2)(ii) provides that a broker or dealer may transfer a customer's interest in one product in a sweep program to another product in a sweep program, provided that the customer gives prior written affirmative consent to having free credit balances in the customer's securities account included in the sweep program and after being notified that, among other things, the broker or dealer may change the products available under the sweep program.[18] When determining the type of sweep product in which to immediately reinvest free credit balances, the receiving firm should consider whether customers have provided prior written affirmative consent to the delivering firm (*e.g.*, through the customer agreement) to have their free credit balances invested in different sweep products.

(D) Timing

Customers benefit from sufficient notice of changes to their accounts. When customers receive a letter, they need time to decide whether the transfer or assignment is right for them. As stated in *NTM 02-57*, absent exigent circumstances, a member should provide customers with at least 30 days' notice before transferring or assigning their accounts via negative consent to another member.[19] Exigent circumstances are rare and include situations such as a firm going out of business on short notice for unforeseen or unexpected reasons.

In some instances, customers would benefit from having more than 30 days' notice, or receiving more than one letter informing them of upcoming changes to their account.[20]

(E) Description

Customers need to understand the reason for the change and how it will affect their account to determine whether the change is right for them. As stated in *NTM 02-57*, members should provide customers with a clear and concise description of the circumstances necessitating the transfer or assignment. In addition, members may consider providing customers with other relevant information that would assist the customers' decision (*e.g.,* a brief description of the receiving firm's services and whether the products offered by the receiving firm are similar to those offered by the delivering firm).[21] Members may also consider providing customers with information about any immediate impacts of the change (*e.g.,* disclosure of any trading restrictions during the transfer or assignment process).[22] This will enable customers to make an informed decision as to whether to opt out of the transfer or assignment.

(F) Opt-Out Provisions

Providing customers with the opportunity to opt out of a change to their account is fundamental to the use of negative consent. As stated in *NTM 02-57*, the letter should include a statement that the customer has the right to object to the proposed transfer or assignment. In connection with this option, customers can best decide whether to opt out if the letter informs them of:

- the date by which they need to respond if opting out;
- how to opt out (*e.g.,* by telephone, email or another method); and
- the alternatives available to the customer if opting out, including information about how the customer can effectuate a transfer to a different firm and the consequences of opting out without effectuating a transfer to a different firm.[23]

(G) Fee Waivers and Disclosures

Customers who do not opt out should not be charged for any transfer or assignment based on negative consent. Some customers who receive a letter may decide to opt out of the transfer or assignment via negative consent and instead affirmatively transfer their accounts to another member, other than the receiving firm, either before or after the opt-out deadline. In these cases, the delivering firm should waive any ACATS fees related to such transfers by customers, regardless of whether the transfer occurs before or after the opt-out deadline.[24]

In addition, customers who do not initially opt out of the transfer or assignment may nevertheless decide to affirmatively transfer their accounts to another member within a short period after their accounts have been transferred or assigned to the receiving firm. Thus, the receiving firm may consider waiving ACATS fees for some period (*e.g.,* 30 to 60 days) following the transfer or assignment, which would effectively provide customers with additional time to decide whether to transfer their accounts to another member without incurring any fees. This is especially important for customers who receive less than 30 days' notice of the transfer or assignment due to exigent circumstances, as discussed above.

In any event, as stated in *NTM 02-57*, the letter should disclose any cost that will be imposed on the customer as a result of the transfer or assignment.

(H) Delivery

Members may choose among various delivery methods for sending letters, including regular mail or electronic delivery, consistent with the guidance regarding the electronic delivery of information to customers.

Conclusion

FINRA believes members and investors will benefit from this *Notice*, which reduces burdens associated with the process for reviewing draft letters and consolidates prior guidance on the circumstances in which members have used negative consent to effect a bulk transfer or assignment. In addition, the effective practices outlined in this *Notice* will enable members to develop new or modify existing practices with respect to the use of letters in a manner that promotes consistent compliance expectations and efficiency of the customer account transfer process while protecting investors. FINRA notes that it has received comments on the use of negative consent in response to *Regulatory Notice 25-07* as part of its broad rule modernization review and, in the spirit of continuous improvement, FINRA looks forward to further engagement on this topic.

In addition, to empower member compliance, FINRA will make available other resources on its website.

Effective Date

As stated above, the changes regarding FINRA staff's review of draft letters will become effective on April 1, 2026.

Endnotes

1 *See* FINRA Announces New "FINRA Forward" Initiatives to Support Members, Markets and Investors (April 21, 2025).

2 As used in this *Notice*, the term "account" refers to a customer's securities account.

3 *See Notice to Members (NTM) 02-57* (September 2002) ("The staff generally believes that a customer should affirmatively consent to the transfer of his or her account to another firm. Various factors may affect an investor's decision to move an account to a new firm, including, for example, the level and quality of service of the new firm, the fees and charges imposed by the new firm, and the cost of the transfer itself. However, when a firm initiates the transfer of a customer's account, there is no assurance that the customer has had sufficient time or information with which to decide whether to object to the transfer. Further, members may be inclined to use negative [consent] letters because of the convenience these letters provide without giving due consideration to whether soliciting affirmative customer consent is a viable alternative. For these reasons, transfers of customer accounts by a member using negative [consent] letters may, under certain circumstances, conflict with a member's obligation to observe high standards of commercial honor and just and equitable principles of trade" under FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) (then NASD Rule 2110).).

4 *See NTM 02-57*, *supra* note 3; *see also* FINRA Rule 3260 (Discretionary Accounts) (prohibiting members from exercising discretionary power in a customer's account without the customer's prior written authorization).

5 *See, e.g., NTM 02-57, supra* note 3, and *Regulatory Notice 15-22* (June 2015). FINRA staff has also published interpretive guidance regarding the use of negative consent. *See, e.g., letter from Patricia Albrecht, Assistant General Counsel, NASD, to Michael R. Trocchio, Bingham McCutchen, LLP*, dated November 10, 2004 (providing guidance where a firm was divesting itself of its retail brokerage business and seeking to effect a bulk transfer of its retail customer accounts to another firm using negative consent); *letter from Afshin Atabaki, Special Advisor and Associate General Counsel, FINRA, to T. Douglas Hollowell, General Counsel, UBS Financial Services, Inc.*, dated July 24, 2020 (providing guidance where a member administering an employee equity compensation plan for an employer was seeking to effect a bulk transfer of plan participants' accounts to another member with which the employer had entered into a relationship); *letter from Ilana Herscovitz Reid, Associate General Counsel, FINRA, to Janet Dyer, National Financial Services, LLC*, dated April 26, 2023 (providing guidance where a clearing member was seeking to use negative consent to assign orphan accounts to an introducing broker-dealer on the clearing member's platform) (NFS Letter).

6 *See, e.g., letter from Patricia Albrecht, Assistant General Counsel, NASD, to Barry Harris, Chief Counsel, Banc of America Investment Services, Inc.*, dated October 20, 2004 (stating that a member named as broker-dealer of record on directly held mutual fund and variable insurance product accounts that is acquired by or merged with another member that will be the legal successor-in-interest may use negative consent to change the broker-dealer of record on the accounts to the member that will become the successor-in-interest); *memorandum from NASD Office of General Counsel, Regulatory Policy and Oversight* (November 8, 2004) (*2004 Memo*) (permitting a member named as broker-dealer of record

on directly held mutual fund and variable insurance product accounts to use negative consent to change the broker-dealer of record on the accounts to another firm in the following situations: (1) the firm is going out of business; (2) registered representative(s) is leaving the firm and the firm will not be providing the services the registered representative(s) was performing for the directly held account; or (3) a networking arrangement between the firm and a financial institution has concluded or terminated). The *2004 Memo* superseded *NTM 04-72* (October 2004), which had stated that members "must obtain affirmative consent from a customer to direct a change in the [broker-dealer] of record in either a mutual fund or variable annuity account."

7 In this *Notice*, "letters" refer to letters sent to customers to effectuate a transfer or assignment of accounts by negative consent. In prior guidance, FINRA referred to such letters as "negative response letters." *See, e.g., NTM* 02-57, *supra* note 3.

8 *See Interpretive Questions*.

9 FINRA reminds firms that registered persons may not use negative consent to transfer or assign customer accounts. *See NTM 02-57*, *supra* note 3.

10 *See, e.g.*, Exchange Act Rule 15c3-3(j)(2)(ii) (requiring broker-dealers to obtain the customer's prior written affirmative consent to make future changes to sweep programs via 30 days' notice).

11 *See* Securities Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824, 51840 (August 21, 2013) (Financial Responsibility Rules for Broker-Dealers) (stating that a customer's prior written affirmative consent relating to a broker-dealer's sweep program could be given in an account opening agreement).

12 Paragraph (a) of FINRA Rule 1017 sets forth events that would require the filing of CMA, such as certain mergers and acquisitions or a material change in business operations, among other things.

13 *See* Regulation S-P (Privacy of Consumer Financial Information and Safeguarding Personal Information), 17 CFR 248. As stated in *NTM 02-57*, each letter should include "A statement regarding the firm's compliance with [Regulation S-P] in connection with the transfer."

14 For instance, if the brokerage relationship has been changed to a new firm, the new firm may still need to obtain any necessary customer authorization, documentation or agreement before effecting a securities transaction.

15 As defined in the Securities Exchange Act of 1934 (Exchange Act), "the term 'Sweep Program' means a service provided by a broker or dealer where it offers to its customer the option to automatically transfer free credit balances in the securities account of the customer to either a money market mutual fund product as described in [Rule 2a-7 of the Investment Company Act of 1940] or an account at a bank whose deposits are insured by the Federal Deposit Insurance Corporation." *See* Exchange Act Rule 15c3-3(a)(17).

16 *See* Frequently Asked Questions Concerning the Amendments to Certain Broker-Dealer Financial Responsibility Rules, Division of Trading and Markets, Bulk Transfer Questions, Question and Answer No. 14, (March 6, 2014).

17 *See* Frequently Asked Questions Concerning the Amendments to Certain Broker-Dealer Financial Responsibility Rules, Division of Trading and

Markets, Bulk Transfer Questions, Question and Answer No. 15 (March 6, 2014). *See also* Exchange Act Rule 15c3-3(j)(2)(ii)(A)(1)-(2), *supra* note 10 (requiring customers to give prior written affirmative consent to having free credit balances in the customer's account included in a sweep program after being notified of the general terms and conditions of the products available through the sweep program, and that the broker or dealer may change the products available under the sweep program); Exchange Act Rule 15c3-3(j)(2)(ii)(B)(1), *supra* note 10 (requiring the broker-dealer to provide the customer with the disclosures and notices regarding the sweep program required by each self-regulatory organization of which the broker or dealer is a member); FINRA Rule 3260(d)(2), *supra* note 4 (addressing bulk exchanges at net asset value of money market mutual funds).

18 *See* Exchange Act Rule 15c3-3(j)(2)(ii), *supra* note 10.

19 *See* FINRA Rule 3260(d)(2)(D), *supra* note 4 (providing for 30 days' notice before a bulk exchange of money market mutual funds); Exchange Act Rule 15c3-3(j)(2)(ii)(B)(3)(i), *supra* note 10 (requiring 30 days' notice before making certain changes to a sweep program).

20 *See, e.g., NFS Letter, supra* note 5 (providing guidance where clearing firm sent two letters over a 120-day period in connection with the assignment of orphan accounts).

21 In other contexts, FINRA has required firms to provide similar information to customers. For example, FINRA Rule 2273 (Educational Communication Related to Recruitment Practices and Account Transfers) requires firms to deliver an educational communication that highlights key issues that will help the customer make an informed decision in connection with firm recruitment practices and individual account transfers. *See, e.g., Regulatory Notice 16-18* (May 2016) (SEC Approves Rule Requiring Delivery of an Educational Communication to Customers of a Transferring Representative), Attachment B.

22 To the extent the member imposes any trading restrictions during the transfer or assignment process, the member should determine whether it has authority to impose such restrictions.

23 For instance, customers who opt out but do not affirmatively transfer their account to a new firm prior to the opt-out deadline may be left at the delivering firm with limited services.

24 FINRA has stated that it "believes it is not appropriate to charge fees to customers for involuntary account transfers through ACATS occasioned by circumstances beyond the customer's control." *NTM 92-11* (February 1992).