

# Notice to Members

NOVEMBER 2006

## SUGGESTED ROUTING

Institutional Customers  
Legal & Compliance  
Operations  
Senior Management  
Clearing Firms

## KEY TOPICS

Customer Account Statements  
DVP/RVP (Delivery versus Payment/  
Receive versus Payment)  
NASD Rule 2340  
NASD Rule 3110  
NASD Rule 11860  
SEC Rule 10b-10  
SEC Rule 15c3-2  
SEC Rule 17a-4

## GUIDANCE

### Customer Account Statements

SEC Approves Amendments to Rule 2340 to Allow DVP/RVP Customers to Elect Not to Receive Account Statements; **Effective Date: November 22, 2006**

#### Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to Rule 2340 that permit customers whose accounts are carried solely for the purpose of execution on a DVP/RVP (delivery versus payment/receive versus payment) basis to opt out of receiving customer account statements.<sup>1</sup>

The effective date of this rule change is November 22, 2006. Included with this *Notice* is Attachment A, the text of amended Rule 2340.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411.

#### Background and Discussion

Rule 2340 requires any member that conducts a general securities business and also carries customer accounts or holds customer funds or securities, at least once each calendar quarter, to send an account statement to each customer whose account had a security position, money balance or account activity during the time since the last statement was sent. The account statement must contain a description of any securities positions, money balances or account activity in the account.

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In a DVP/RVP arrangement, 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.<sup>2</sup> Because transactions in DVP/RVP accounts (chiefly institutional accounts) are settled directly with the agent on a transaction-by-transaction basis, account statements sent by general securities firms to customers with DVP/RVP accounts generally do not reflect any cash balance or security position at the end of a quarter. Rather than using the information provided in quarterly statements, DVP/RVP customers generally rely on trade runs or customer confirmations issued pursuant to SEC Rule 10b-10 for transaction-related information.<sup>3</sup>

The amendments to Rule 2340 relieve members from the obligation to send quarterly statements to customers with DVP/RVP accounts if: (1) the customer's account is carried solely for the purpose of execution on a DVP/RVP basis; (2) all transactions in the account are handled on a DVP/RVP basis in conformity with Rule 11860;<sup>4</sup> (3) there are no securities or cash positions in the account at the end of the quarter (other than 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); (4) the customer consents to the suspension of such statements in writing, and the member maintains such consents in a manner consistent with Rule 3110 and SEC Rule 17a-4;<sup>5</sup> (5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member promptly undertakes to reinstate the delivery of such statements to the customer upon request.

The amendments to Rule 2340 do not qualify or condition the obligations of a member under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.<sup>6</sup> 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. In addition, customers are able to promptly receive particular account statements upon request, and promptly reinstate the delivery of account statements upon request.

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## Endnotes

- 1 See Exchange Act Release No. 54811 (Nov. 22, 2006), 71 FR 69161 (Nov. 29, 2006) (Order Approving Proposed Rule Change; File No. SR-NASD-2006-066).  

This rule change is similar to a rule change proposed by the New York Stock Exchange, Inc. (now known as New York Stock Exchange LLC). See Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).
- 2 For purposes of Rule 2340, a DVP/RVP account is defined in Rule 2340(b) as 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.
- 3 See SEC Rule 10b-10 (Confirmation of Transactions) and NASD Rule 11860 (Acceptance and Settlement of COD Orders).
- 4 Prior to accepting an order in a DVP/RVP account, a member must comply with Rule 11860, which requires, among other things, that the member obtain certain information from the customer, including the name and address of the agent and the account number of the customer on file with the agent.
- 5 Under NASD Rule 3110(a), NASD members are required, among other things, to make and preserve books and records as prescribed by SEC Rule 17a-3. Rule 3110 also states that the record keeping format, medium, and retention period must comply with SEC Rule 17a-4. Rule 17a-4 specifies the manner in which broker-dealers must maintain the records created in accordance with SEC Rule 17a-3, and certain other records produced by broker-dealers, and the required retention periods for these records.
- 6 SEC Rule 15c3-2 requires broker-dealers to provide each of their customers for whom a free credit balance is carried, not less frequently than once every three months, a written statement informing the customer of the amount due to the customer, and written notice that the funds are not segregated and may be used in the broker-dealer's business operations, and that the funds are payable on the customer's demand.

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## ATTACHMENT A

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### 2300. TRANSACTIONS WITH CUSTOMERS

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#### 2340. Customer Account Statements

##### (a) General

Except as otherwise provided by paragraph (b), [E]ach 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.

##### (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 Rule 3110 and SEC Rule 17a-4;
- (5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and

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

[(b)] **(c)** No change in text.

[(c)] **(d) Definitions**

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

(1) - (5) No change in text.

(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.

[(d)] **(e) Exemptions**

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

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