

Notice to Members

JUNE 2007

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Clearing Firms
Introducing Firms
NASD Rule 2342
Securities Investor Protection Act of 1970 (SIPA)
Securities Investor Protection Corporation (SIPC)
SIPC Brochure
SIPC Web Site

GUIDANCE

SIPC Information

SEC Approves Rule 2342 Setting Forth Requirements for Providing SIPC Information to Customers;
Effective Date: November 6, 2007

Executive Summary

On May 10, 2007, the Securities and Exchange Commission (SEC) approved NASD Rule 2342 setting forth requirements for providing Securities Investor Protection Corporation (SIPC) information to customers.¹ Under Rule 2342, all members—unless they are excluded from membership in SIPC and are not SIPC members, or they exclusively sell investments that are ineligible for SIPC protection—are required to advise all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. Members must provide this disclosure to new customers, in writing, at the opening of an account and also must provide customers with the same information, in writing, at least once each year. The effective date is **November 6, 2007**.

Included with this *Notice* is Attachment A, the text of Rule 2342.

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; or Patricia Albrecht, Assistant General Counsel, Office of General Counsel, at (202) 728-8026.

Background and Discussion

On May 25, 2001, the Government Accountability Office (GAO) issued *Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors* (GAO-01-653). In that report, the GAO made recommendations to the SEC and SIPC about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act of 1970 (SIPA). Among other things, the GAO recommended that self-regulatory organizations (SROs) explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of coverage of SIPA.² The GAO also recommended that the SROs consider requiring firms to include information on periodic statements or trade confirmations advising investors that they should document account discrepancies in writing. In July 2003, the GAO issued an updated report (*Securities Investor Protection: Update on Matters Related to the Securities Investor Protection Corporation*), in which it noted that the SEC was working with SROs to explore ways in which the GAO's recommendations could be implemented.

As described below, NASD has made two rule changes in response to the GAO's recommendations.³

New Rule 2342

This *Notice* announces the SEC's recent approval of new Rule 2342, which requires all members, except those members that (1) pursuant to Section 3(a)(2)(A)(i) through (iii) of SIPA are excluded from membership in SIPC⁴ and that are not SIPC members, or (2) those members 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 members also must provide SIPC's Web site address (www.sipc.org) and telephone number ((202) 371-8300). In addition, such members must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms. Rule 2342 becomes effective on **November 6, 2007**.

Amendment to Rule 2340

NASD previously announced the SEC's approval of an amendment to Rule 2340 (Customer Account Statements) in *Notice to Members 06-72* (December 2006). The amendment to Rule 2340 requires account statements to 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). This 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. The amendment to Rule 2340 went into effect on **May 31, 2007**.⁵

Endnotes

- 1 Securities Exchange Act Release No. 55737 (May 10, 2007), 72 FR 27606 (May 16, 2007) (SR-NASD-2006-124), as corrected by SR-NASD-2007-036 (June 1, 2007).
- 2 In brief, the SIPC brochure describes such things as the role of SIPC, what SIPC covers and what it does not, and how SIPC operates if a brokerage firm fails.
- 3 The New York Stock Exchange has made similar amendments to NYSE Rule 409 (Statements of Accounts to Customers) in response to the GAO's recommendations. See Securities Exchange Act Release No. 54904 (December 8, 2006), 71 FR 75600 (December 15, 2006) (SR-NYSE-2005-09) (effective May 31, 2007).
- 4 Under Section 3(a)(2)(A)(i) through (iii) of SIPA, members of SIPC include all persons registered as brokers or dealers under section 15(b) of the Exchange Act, other than:
 - (1) persons whose principal business, in the determination of SIPC, taking into account business of affiliated entities, is conducted outside the United States and its territories and possessions;
 - (2) persons whose business as a broker or dealer consists exclusively of (a) the distribution of shares of registered open end investment companies or unit investment trusts, (b) the sale of variable annuities, (c) the business of insurance, or (d) the business of rendering investment advisory services to one or more registered investment companies or insurance company separate accounts; and
 - (3) persons who are registered as a broker or dealer pursuant to section 15(b)(11)(A) of the Exchange Act [pertaining to registration with respect to transactions in security futures products].
- 5 See Securities Exchange Act Release No. 54411 (September 7, 2006), 71 FR 54105 (September 13, 2006) (SR-NASD-2004-171), as corrected by Securities Exchange Act Release No. 54411A (October 6, 2006), 71 FR 61115 (October 17, 2006) (SR-NASD-2004-171). See *also* Securities Exchange Act Release No. 54872 (December 5, 2006) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Establishing an Effective Date for Amendments to NASD Rule 2340); File No. SR-NASD-2006-128.

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ATTACHMENT A

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2000. BUSINESS CONDUCT

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2300. Transactions with Customers

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2342. SIPC Information

All members, except those members: (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; or (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall 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, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.