

Accumulated Funds

SEC Approves New Interpretive Material That Authorizes FINRA to Establish a Temporary Program to Allow Firms to Voluntarily Remit Accumulated Funds; Reminder Concerning Proper Disclosure of the Section 3 Fee

Effective Date: December 11, 2007

Sunset Date: June 11, 2008

Executive Summary

FINRA is establishing a temporary program that will allow member firms to remit to FINRA funds previously collected, but not remitted, in connection with assessments used by NASD to pay the SEC's Section 31 fees, otherwise known as "accumulated funds." Firms may, on a one-time only, voluntary basis, remit all or part of historically accumulated funds that were collected and are in surplus of the assessment under Section 3 of Schedule A to the By-Laws in accordance with the terms of this interpretive material. This Program is effective December 11, 2007 and will automatically sunset effective June 11, 2008, and thereafter may not be used by member firms.

FINRA also is reminding firms of proper disclosure for transaction fees assessed under Section 3.

Questions concerning this *Notice* may be directed to Finance, at (240) 386-5397; or the Office of General Counsel, at (202) 728-8071.

September 2007

Notice Type

- Guidance

Suggested Routing

- Finance
- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

- Accumulated Funds
- Section 3 of Schedule A to the By-Laws
- Section 31 of the Securities Exchange Act of 1934

Referenced Rules & Notices

- IM-Section 3
- SEC Rule 31

Background and Discussion

On June 8, 2007, the Securities and Exchange Commission (SEC or Commission) approved new interpretive material (IM-Section 3) to Section 3 of Schedule A to the By-Laws.¹ IM-Section 3 establishes a temporary program to allow member firms to voluntarily remit funds originally collected for purposes of paying Section 31 fees to the SEC to be used to pay such fees.

Pursuant to Section 31 of the of the Securities Exchange Act of 1934² and SEC Rule 31, FINRA and the national securities exchanges are required to pay transaction fees to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, FINRA assesses its clearing and self-clearing members a regulatory fee in accordance with Section 3 of Schedule A of the By-Laws, which mirrors the SEC Section 31 fee in scope and amount. Clearing firms may, in turn, seek to charge a fee to their customers or correspondent firms.

Precisely reconciling the amounts billed previously by NASD and the amounts collected from customers and correspondent firms historically has been difficult for some member firms, causing surpluses to accumulate at these firms. These accumulated funds were not remitted, although they may have been previously identified as "Section 31 Fees" or "SEC Fees" by certain firms.³

Consequently, to address the issue of accumulated funds, NASD proposed, and the SEC approved, a temporary program to allow firms, on a one-time-only basis, to voluntarily remit historically accumulated funds. These funds will be used to pay FINRA's current Section 31 fees in conformity with prior representations made by member firms. To the extent the payment of these historically accumulated funds is in excess of the fees due to the SEC from FINRA under Section 31 of the Act, such surplus shall be used by FINRA to offset other regulatory costs.

It should be noted that member firms are not required to remit such funds to FINRA. This program is completely voluntary. Accordingly, this temporary program imposes no obligation on any FINRA member firm that believes that accumulated funds should be retained or disposed of in another manner. Firms wishing to remit such accumulated funds to FINRA may submit a check or wire such funds to FINRA specifying on the check or in the wire transfer that such funds are “FINRA Accumulated Funds.”

► **Checks can be sent to:**

FINRA
P.O. Box 7777-W8555
Philadelphia, PA 19175-8555

► **FINRA wire information:**

Bank Address: **Philadelphia, PA**
Account Name: **FINRA**
ABA Number: **031000037**
Account Number: **8-234-353**

Disclosure of Section 3 Fees

FINRA also would like to take this opportunity to reiterate its prior statements⁴ that member firms that pass on to their customers transaction fees collected under Section 3 of Schedule A to the By-Laws are not permitted to refer to the fees assessed by FINRA as “Section 31 Fees” or “SEC Fees.” Further, FINRA reminds firms that they should not mislabel this fee on customer confirmations, or in any representations or communications with customers. Adhering to this guidance should ensure that issues related to accumulated funds will not recur.

Endnotes

- 1 See Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (June 14, 2007) (order approving SR-NASD-2007-027). The Commission found that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission found that the proposed rule change is consistent with Section 15A(b)(6) of the Act, which requires, among other things, that NASD 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. In addition, the Commission stated in its approval order that it believes that this program “will provide a reasonable means for member firms to dispose of any accumulated funds they may have in their possession.”
- 2 15 U.S.C. 78ee.
- 3 NASD’s rule also previously referred to this fee as an “SEC Transaction Fee.” The SEC stated in its release adopting new Rule 31 and Rule 31T that “it is misleading to suggest that a customer or [self-regulatory organization] member incurs an obligation to the Commission under Section 31.” See Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, NASD amended its rule to refer to this fee as a “Regulatory Transaction Fee.” See Securities Exchange Act Release No. 50274 (August 26, 2004), 69 FR 53757 (September 2, 2004) (SR-NASD-2004-129). Further, NASD issued guidance to ensure there is no confusion in the marketplace regarding NASD’s “Regulatory Transaction Fee” and the “SEC’s Section 31 Fee.” See NASD Member Alert issued on June 27, 2007, *Notice to Members 05-11* (February 2005) and *NTM 04-63* (August 2004).
- 4 See NASD Member Alert issued on June 27, 2007, *NTM 05-11* (February 2005) and *NTM 04-63* (August 2004).