

Minor Rule Violation Plan

Amendments to NASD IM-9216 to include certain NYSE Rules under the Minor Rule Violation Plan

Effective Date: September 24, 2007

Executive Summary

Effective September 24, 2007, the list of violations eligible for disposition under the MRVP includes certain NYSE rules that pertain to the regulation of member firm conduct and that were incorporated into the FINRA rulebook.¹ FINRA's NYSE rules apply solely to FINRA members that also are members of the NYSE on or after July 30, 2007, referred to as "dual members." The amendments to NASD IM-9216 allow FINRA to impose a fine—rather than commence disciplinary proceedings—for minor violations by dual members of the NYSE rules (in addition to the other rules) contained in the MRVP.

IM-9216, as amended, is set forth in Attachment A of this *Notice*.

Questions concerning this *Notice* may be directed to Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, at (202) 974-2974.

Background and Discussion

The FINRA rulebook currently consists of both NASD Rules and certain incorporated NYSE Rules. The incorporated NYSE Rules apply solely to members of FINRA that are also members of the NYSE on or after July 30, 2007, referred to as "dual members."²

FINRA did not incorporate, among other rules, the NYSE disciplinary rules or related interpretations, including NYSE's Minor Rule Violation Plan (MRVP), as set forth in NYSE Rule 476A.³ As a result, FINRA has amended its MRVP (as set forth in NASD IM-9216) to include those incorporated NYSE Rules currently listed in NYSE's MRVP.

October 2007

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management

Key Topic(s)

- Minor Rule Violation Plan (MRVP)

Referenced Rules & Notices

- NASD IM-9216
- NASD Rule 9216
- NYSE Rule 476A
- SEC Rule 19d-1(c)(2)

The purpose of the MRVP is to provide for a meaningful sanction for a minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in the MRVP does not mean it is an unimportant rule; rather, it means that a minor or technical violation of the rule may be more appropriately handled with a fine rather than through disciplinary proceedings. FINRA retains the discretion to bring full disciplinary proceedings for the violation of any rule listed in the MRVP.

Currently, NASD IM-9216 lists certain rules from the following categories of rules, the minor violation of which may result in a fine:

- ▶ NASD Rules
- ▶ Provisions of the NASD (now FINRA) By-Laws and Schedules to By-Laws
- ▶ Incorporated NYSE Rules
- ▶ Exchange Act Rules
- ▶ MSRB Rules

The amendments to IM-9216 also specify the applicability of the rules listed based on whether the firm is a dual member or a FINRA-only member.

- ▶ Any dual member (including any persons affiliated with such member) may be subject to a fine for minor violations of any rule listed in NASD IM-9216 that applies to such member or person. However, any dual member that was not also a member of NASD as of July 30, 2007 (*i.e.*, was an NYSE-only member prior to the effective date of the consolidation) and that does not engage in any activities that would have required it to be a FINRA member (and its affiliated persons that are not otherwise subject to NASD rules) may be subject to a fine for minor violations only of the following rules listed in NASD IM-9216: any incorporated NYSE Rule, Exchange Act Rule, FINRA By-Law or Schedule to By-Laws, or the NASD Rule 8000 Series.⁴
- ▶ Any FINRA member firm that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine for minor violations of any rule listed in NASD IM-9216, with the exception of the incorporated NYSE rules.

FINRA will continue to apply the \$2,500 maximum fine level under NASD IM-9216 in determining fine levels for minor violations of any rule included in the plan, including the incorporated NYSE Rules.

The amendments also delete from NASD IM-9216 references to NASD rules that have been rescinded.⁵

Endnotes

- 1 See Securities Exchange Act Release No. 56504 (September 24, 2007), 72 FR 55850 (October 1, 2007) (Approval Order of File No. SR-NASD-2007-055).
- 2 See Securities Exchange Act Release No. 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (Notice of Filing and Order Granting Accelerated Approval of File No. SR-NASD-2007-054).
- 3 The NYSE's MRVP (NYSE Rule 476A) was not incorporated because NYSE Rule 476A contains procedures that would conflict with the finding of a minor rule violation by FINRA. For example, NYSE Rule 476A permits a person against whom a fine is imposed to contest the NYSE's fine determination by, among other things, appealing to the NYSE board of directors.
- 4 FINRA has established a membership waive-in process for certain NYSE member organizations that were not also NASD members as of July 30, 2007. See Securities Exchange Act Release No. 56653 (October 12, 2007), 72 FR 59127 (October 18, 2007) (Order Approving SR-NASD-2007-056). Firms admitted pursuant to this process are subject only to the incorporated NYSE Rules, FINRA's By-Laws and Schedules to By-Laws, the NASD Rule 8000 Series (Investigations and Sanctions) and the NASD Rule 9000 Series (Code of Procedure), provided their securities business is limited to certain permitted floor activities. Accordingly, such firms are not subject to a fine for the minor violation of NASD Rules that do not apply to such firms.
- 5 On June 30, 2006, the SEC approved SR-NASD-2005-087, which, among other things, deleted NASD Rules 4619, 4642, 4652, 5430, 6720 and 8212 from the NASD Manual. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (Order Approving SR-NASD-2005-087). On September 28, 2006, the SEC approved SR-NASD-2006-091, which, among other things, deleted NASD Rule 6420 from the NASD manual. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order Approving SR-NASD-2006-091).

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Attachment A

Below is the text of the rule change. New language is underlined; deletions are in brackets

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9200. DISCIPLINARY PROCEEDINGS

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IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

Any member of FINRA that is also a member of the New York Stock Exchange LLC (“NYSE”) (“Dual Member”) (including any persons affiliated with such member) may be subject to a fine under NASD Rule 9216(b) with respect to any rule listed in this IM-9216 that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that would have required it to be an NASD member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under NASD Rule 9216(b) with respect to the following rules listed in this IM-9216: any NYSE rule, SEC Exchange Act rule, NASD By-Law or Schedule to the By-Laws, or the NASD Rule 8000 Series.

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under NASD Rule 9216(b) with respect to any rule listed in this IM-9216, with the exception of the NYSE rules.

—NASD Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.

—NASD Rule 3360 — Failure to timely file reports of short positions on Form NS-1.

—NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules.

—NASD Rules 8211[, Rule 8212,] and [Rule] 8213 — Failure to submit trading data as requested.

—Article IV of the NASD By-Laws — Failure to timely submit amendments to Form BD.

- Article V of the NASD By-Laws — Failure to timely submit amendments to Form U4.
- Article V of the NASD By-Laws — Failure to timely submit amendments to Form U5.
- NASD Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.
- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.
- NASD Rule 3070 — Failure to timely file reports.
- [— Rule 4619(d) — Failure to timely file notifications pursuant to SEC Regulation M.]
- NASD Rules 4632, [4642, 4652,]4632A, [5430,]6130, 6170, 6130A, 6170A, 6230, [6420,]6550, and 6620[, and 6720] — Transaction reporting in equity and debt securities.
- NASD Rules 6954 and 6955 — Failure to submit data in accordance with the Order Audit Trail System (“OATS”).
- NASD Rule 11870 — Failure to abide by Customer Account Transfer Contracts.
- Failure to provide or update contact information as required by NASD Rules.
- SEC Exchange Act Rule 604 — Failure to properly display limit orders.
- SEC Exchange Act Rule 602(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks (“ECNs”).
- SEC Exchange Act Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.
- SEC Exchange Act Rule 17a-10 — Failure to timely file Schedule I.
- MSRB Rule A-14 — Failure to timely pay annual fee.
- MSRB Rule G-12 — Failure to abide by uniform practice rules.
- MSRB Rule G-14 — Failure to submit reports.
- MSRB Rule G-36 — Failure to timely submit reports.

- MSRB Rule G-37 — Failure to timely submit reports for political contributions.
- MSRB Rule G-38 — Failure to timely submit reports detailing consultant activities.
- NYSE Rule 134(c) and (e) — Failure to comply with specified QT procedures and time periods.
- NYSE Rules 312(a), (b) & (c), 313, 345.12, 345.17, 346(c), 351, 421, and 440F & G — Reporting rule violations.
- NYSE Rules 345.11, 410, 432(a), 440, 440I, and 472(c) — Record retention rule violations.
- NYSE Rules 312(h) & (i), 342(c), 342.10, 346(e) and (f), 382(a), and 791(c) — Failure to obtain approval rule violations.
- NYSE Rules 342(b), (d) & 342.13, 311(b)(5), and 344 — Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.
- NYSE Rule 343 — Requirements relating to member organization office sharing arrangements.
- NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.
- NYSE Rule 346(b) — Failure to obtain employer’s prior written consent for engaging in an outside activity.
- NYSE Rule 352(b) and (c) — Guaranteeing a customer’s account against loss or sharing in profits or losses.
- NYSE Rule 387 — Requirements for customer COD/POD transactions.
- NYSE Rule 392 — Notification requirements.
- NYSE Rule 401A — Failure to acknowledge customer complaint within 15 business days.
- NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.

—NYSE Rule 407A — Reporting and notification requirements for members.

—NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer’s account.

—NYSE Rule 411(b) — Requirements to bundle multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lot orders.

—NYSE Rule 412 and the interpretations thereunder — Failure to transfer a customer securities account in accordance with requirements.

—NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform (“EFP”), or failure to electronically certify that required membership profile information is complete and accurate.

—NYSE Rule 445(4) — Failure to designate and identify an Anti-Money Laundering contact person or persons.

— NYSE Rules 704 and 705 — Options position limits and exercise limits.

— NYSE Rules 720 and 722(b) — Failure of a member organization to have individuals responsible and qualified for the positions of Registered Options Principal, Senior Registered Options Principal and Compliance Registered Options Principal.

— NYSE Rule 726 — Options disclosure document and prospectus delivery requirement violations.

— NYSE Rule 780(b)(i) — Requirement for members and member organizations to indicate final decisions of holders of equity options either to exercise or not to exercise expiring equity options by a specific time.

— NYSE Rule 780(f) — Requirement for members and member organizations to make, keep and file with the Exchange records concerning final exercise decisions made with respect to options in certain circumstances.

— NYSE Rule 780.10(b) — Requirement to deliver “exercise advice”.

— NYSE Rule 781 — Allocation of exercise assignment notice violations.

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