

# Information Notice

## Rulebook Consolidation Process

### Executive Summary

Following the consolidation of NASD and NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook, which is outlined in this *Notice*. The new FINRA Rules will apply to all FINRA members and will be proposed in phases to the SEC. As rules approved by the SEC become effective, they will replace the existing NASD Rules and incorporated New York Stock Exchange (NYSE) Rules.

Questions regarding this *Notice* should be directed to Patrice Gliniecki, Deputy General Counsel, Office of General Counsel (OGC), at (202) 728-8071; or Philip Shaikun, Associate Vice President and Associate General Counsel, OGC, at (202) 728-8451.

### Discussion

#### General Process

FINRA has been working diligently to develop an expeditious and sensible approach to create a new consolidated rulebook, which seeks not only to harmonize and streamline existing rules, but also to give consideration to the rapidly evolving nature of the securities business and the broad diversity of firms subject to FINRA regulation. All the while, FINRA has remained focused on ensuring that FINRA's rules continue to fully reflect its commitment to its core mission of investor protection and market integrity.

March 12, 2008

#### Suggested Routing

- Compliance
- Legal
- Senior Management

#### Key Topics

- FINRA Manual
- Rulebook Consolidation

The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) the rules incorporated from NYSE (Incorporated NYSE Rules) (together referred to herein as the Transitional Rulebook).<sup>1</sup> The Incorporated NYSE Rules apply only to those members of FINRA that also are members of NYSE (Dual Members).<sup>2</sup> The new consolidated rulebook (Consolidated FINRA Rulebook) will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms. Structurally, the Consolidated FINRA Rulebook will feature a new organizational framework that groups and categorizes rules into more logical and related subject matter areas.

As part of the process to develop the Consolidated FINRA Rulebook, FINRA staff has been conducting a comprehensive review of all existing NASD and Incorporated NYSE Rules, guided by several analytical touchstones. First, the staff is identifying those NASD and Incorporated NYSE Rules that are obsolete or otherwise duplicative and should not be adopted as part of the Consolidated FINRA Rulebook.

Second, the staff is analyzing the member conduct, member application and registration, and financial and operational rules that apply to Dual Members to identify significant differences between the NASD and Incorporated NYSE Rules and determine the extent to which the existing rules should inform the final consolidated FINRA Rules. This process incorporates and builds on the product of the rule harmonization project between NASD and NYSE that was underway prior to the regulatory consolidation.

Third, FINRA staff is exploring whether one or a combination of approaches can be applied to the final consolidated FINRA Rules covering member conduct, member application and registration, and financial and operational requirements. These approaches include both a principles-based and tiered approach to the application of rules according to firm size and business model, as well as recognizing possible distinctions in application between retail and institutional customers. In developing the final consolidated rules, FINRA staff is also reviewing the regulatory approaches in certain international jurisdictions.

Finally, FINRA staff is identifying those rules that do not lend themselves as well to this type of analysis and are candidates to be transferred into the Consolidated FINRA Rulebook without substantive modification. These rules include certain procedural and marketplace rules, which are prescriptive by necessity. Of course, all rules in the Consolidated FINRA Rulebook remain subject to further amendments as circumstances, experience and events may warrant.

## SEC Review and Approval

The SEC must approve FINRA rules prior to their becoming effective in the new Consolidated FINRA Rulebook.<sup>3</sup> FINRA intends to obtain those approvals through a series of rule filings with the SEC. FINRA will remain sensitive to the practical considerations faced by members as it sets effective dates for these rules.

As noted above, as the SEC approves new rules for inclusion in the Consolidated FINRA Rulebook and they become effective, FINRA members will become subject to those rules. Members also will remain subject to the rules remaining in the Transitional Rulebook. (The NYSE Incorporated Rules in the Transitional Rulebook will continue to apply only to Dual Members.) As the Consolidated FINRA Rulebook expands with SEC approval and effectiveness of final FINRA Rules, the Transitional Rulebook will be reduced by the elimination of those rules that address the same subject matter of regulation. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

## Consultation

With respect to future proposals related to the rulebook consolidation process, the FINRA Board of Governors will determine on a case-by-case basis whether to file such proposals directly with the SEC or first seek comment in a *Regulatory Notice*. Such determinations will be based on factors that include the subject matter of the proposal and the nature and extent of the proposed changes. For example, FINRA staff anticipates that FINRA would seek comment in a *Regulatory Notice* with respect to proposals relating to supervision and supervisory controls, research reports and research analysts, and communications with the public. In all cases, there will be an opportunity for notice and comment of proposed rule filings.

Irrespective of whether a proposal is filed directly with the SEC or addressed in a *Regulatory Notice*, FINRA intends to consult with its standing committees, the Small Firm Advisory Board, other industry representatives, other regulators and other interested parties to ensure that it is informed by diverse perspectives. Moreover, FINRA will highlight through various communications when proposals have been filed with the SEC, as well as when the SEC publishes such proposals in the *Federal Register*, to afford members and the public a timely opportunity to comment.

## Endnotes

- 1 The NYSE currently maintains in the NYSE Manual comparable versions of the Incorporated NYSE Rules. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 (Exchange Act), NASD, NYSE and NYSE Regulation entered into an agreement (Agreement) to reduce regulatory duplication for firms that are members of both FINRA and the NYSE (Dual Members) by allocating regulatory responsibilities for these rules to FINRA. FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).
- 2 The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the *NYSE Rule Interpretations Handbook* and *NYSE Information Memos*.
- 3 There are limited exceptions specified in the Exchange Act.