

Regulatory Notice

08-11

Electronic Filing

Q&A on Electronic Filing Requirements of NASD Rule 3170

Executive Summary

This *Notice* provides answers to frequently asked questions FINRA has received on the electronic filing requirements under NASD Rule 3170 that became effective January 2007.

The online form filing system—which should be used for submitting the required filings outlined in this *Notice* and in *Notice to Members 06-61*—is available via the FINRA Firm Gateway at <http://firms.finra.org/financialnotifications>.

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

In November 2006, FINRA (then NASD) published *Notice to Members 06-61*, which outlined the newly approved electronic filing requirements and effective date of new NASD Rule 3170 (Mandatory Electronic Filing Requirements).¹ Specifically, the Notice listed 10 financial notifications (and 11 related SEC Rules) to which NASD Rule 3170 would apply immediately. As such, on January 1, 2007, firms were required to file each of the following notifications via an online system:²

March 2008

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Electronic Filing Requirements

Referenced Rules & Notices

- NASD Rule 3170
- NTM 06-61

Rule 15c3-1(e)	Withdrawals of equity capital
Rule 15c3-3(i)	Special reserve bank account
Rule 17a-4(f)(2)(i) Rule 17a-4(f)(3)(vii)	Electronic storage media
Rule 17a-5(f)(4)	Replacement of accountant
Rule 17a-11(b)	Net capital deficiency
Rule 17a-11(c)(1)	Aggregate indebtedness is in excess of 1200 percent of net capital
Rule 17a-11(c)(2)	Net capital is less than 5 percent of aggregate debit items
Rule 17a-11(c)(3)	Net capital is less than 120 percent of required minimum dollar amount
Rule 17a-11(d)	Failure to make and keep current books and records
Rule 17a-11(e)	Material inadequacy in accounting systems, internal controls or practices and procedures

Firms should use the Firm Gateway at <http://firms.finra.org/financialnotifications> to file these notifications.

Frequently Asked Questions

Q-1. Are firms that previously had NYSE as their primary examination authority prior to the consolidation of NASD and NYSE Regulation into FINRA required to submit the referenced electronic filings through the new Firm Gateway and Financial Notification submission process?

A-1. Yes. As a result of the consolidation, firms previously designated to NYSE prior to the consolidation became subject to NASD Rule 3170. To help these firms transition to using a new filing system, they will be contacted (via written and/or verbal correspondence) by their Coordinator to explain the new system and will be given an appropriate amount of time to make any necessary filings.

However, NYSE regulatory notifications not otherwise referenced above (e.g., for NYSE 325(b)(2)) are still required to be submitted to your Coordinator in the same format that existed prior to the consolidation.

Q-2. Where can my firm access the system to make electronic filings?

A-2. The financial notifications application is accessible through the Firm Gateway at <http://firms.finra.org/financialnotifications>, which provides a central location for accessing regulatory filing applications and fulfilling regulatory filing obligations. Login to the Firm Gateway using the same username and password you currently use to access other FINRA applications.

For additional guidance, FINRA developed a tutorial for firms on electronic storage media filing requirements for firms, which is available at <http://apps.finra.org/tutorials/portal/esm.htm>.

Q-3. Have the underlying SEC Rules relating to the financial notifications changed?

A-3. No, only the manner in which notifications are filed or submitted to FINRA has changed.

Q-4. What would happen if a firm filed a financial notification after January 1, 2007, via fax or postal mail instead of electronically, due to technical problems?

A-4. Effective January 1, 2007, non-electronic filings do not meet FINRA's requirements and will not be considered filed. Therefore, a fax or hard-copy is *not* an acceptable method of filing a financial notification with FINRA. However, if a firm does not have the ability to submit the required attachments for Rules 17a-4(f)(2)(i), 17a-4(f)(3)(vii) and 17a-5(f)(4) (replacement of accountant) notifications in the requested PDF format, the firms should contact FINRA's Financial Responsibility Group at (202) 728-8221 for alternate filing instructions.

However, in all circumstances, firms previously designated to NYSE prior to the consolidation are encouraged to electronically submit all regulatory filings referenced in this *Notice* through the Financial Notifications System.

Q-5. What if a firm files a financial notification electronically, but wants to ensure delivery by sending a redundant fax or hard copy?

A-5. Please do not send redundant faxes or hard copies. There is no reason to call or resend the required notification to confirm delivery. To evidence submission, firms may print a copy of the notification filed with FINRA, which contains a confirmation number.

Q-6. How was entitlement at member firms determined for submitting financial notifications electronically?

A-6. Any individual authorized to submit a FOCUS Report has also been authorized to submit a financial notification designated under Rule 3170.

Individuals who want to submit notifications pursuant to Rule 3170, but were not entitled by their firms to file FOCUS Reports electronically as of January 1, 2007, will need to contact their firm's Regulatory Filing Applications administrator to be entitled to this application.

Q-7. Does the FINRA filing satisfy a firm's SEC filing requirement?

A-7. No. Firms *must file separately* with SEC headquarters in Washington, DC, and the appropriate regional office. The SEC accepts faxes and copies, but not electronic submissions.

Q-8. How do prospective FINRA members (*i.e.*, applicants) notify FINRA of their intention to use electronic storage media (ESM) if they cannot access the system before their membership is effective?

A-8. Firms do not have a responsibility to provide financial notifications to FINRA until their membership has been approved. Firms may, however, include a reference to ESM within their New Member Application.

Q-9. Why do certain notifications (*e.g.*, Rule 15c3-3(i)) provide fields for more than one date entry (*i.e.*, a FROM DATE and TO DATE)?

A-9. In certain situations, firms may have experienced a deficiency that occurred over a period of time. Providing for a date range permits the firm to properly report the entire period of the deficiency, as opposed to filing multiple notifications. If a deficiency occurred on one day only, the firm would enter the **same** date in both the **FROM DATE** and **TO DATE** fields.

Q-10. How can a firm amend a filing?

A-10. A firm cannot amend an original filing per se; however, if a firm makes a mistake in their submission, it may correct it by submitting a new filing and explaining the reason for the subsequent filing in the comments portion of the template.

For example, if a firm files a notification for withdrawing \$680,000 in capital, but the correct amount is \$860,000, the firm would file a new notification with the correct amount of withdrawn capital and include an explanation in the comments field, such as: "This notification amends a filing made on MM/DD/YY in which we reported a withdrawal of capital of \$680,000. The correct amount is \$860,000."

Q-11. Who should firms contact if they have technology-related questions about the financial notifications application?

A-10. Technology-related questions relating to this matter should be directed to FINRA at (800) 321-6273. Please direct non-technical questions to your firm's Coordinator.

Endnotes

1 See Exchange Act Release No. 54654 (Oct. 26, 2006) (Order Approving Proposed Rule Change to Require Members to File Regulatory Notices with NASD Electronically; File No. SR-NASD-2006-060) (SEC Approval Order).

2 Electronic filing of these notifications with FINRA does not affect requirements in those rules to file notifications with the SEC or other securities regulatory agencies.