

Regulatory Notice

08-26

Investor Education

Proposed Consolidated FINRA Rule Addressing Investor Education and Protection

Comment Period Expires: June 13, 2008

Executive Summary

As part of the process of developing a new consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is proposing to adopt a new FINRA rule based on NASD Rule 2280 (Investor Education and Protection). The rule would require member firms, with certain exceptions, to provide customers with FINRA's Web site address and information regarding FINRA's BrokerCheck program at least once every calendar year.

The text of the proposed rule is set forth in Attachment A.

Questions regarding this *Notice* should be directed to Rachael Grad, Counsel, Office of General Counsel, at (202) 728-8290.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by June 13, 2008. Comments received after the close of the comment period will not be considered, although interested parties will have further opportunity to comment when the proposal resulting from this *Notice* process is filed with the SEC for approval.

May 2008

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

- BrokerCheck
- FINRA Web Site Address
- Investor Education

Referenced Rules & Notices

- NASD Rule 2280
- NTM 98-03

Member firms and other interested parties can submit their comments by:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposals.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.²

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.³

Discussion

NASD Rule 2280 requires that each member firm (other than a firm that does not carry customer accounts and does not hold customer funds or securities) provide its customers with the following information in writing not less than once every calendar year: (1) the “Public Disclosure Program” hotline number; (2) the NASD Regulation Web site address; and (3) a statement regarding the availability of an investor brochure that includes information describing the “Public Disclosure Program.” There is no comparable incorporated NYSE Rule.⁴

Proposed Revisions

Except as described below, NASD Rule 2280 would be adopted as new Proposed FINRA Rule 2267 (the proposed rule) without change.⁵

1. Applicability of Rule

NASD Rule 2280 currently applies to all member firms that carry customer accounts and hold customer funds or securities. The proposed rule would apply to all member firms, with two general exceptions. Any member firm that does not have customers or is an introducing firm that is party to a carrying agreement where the carrying firm member complies with the rule would not be subject to the rule.

Unlike NASD Rule 2280, the proposed rule would apply to member firms that conduct a limited business with customers, such as mutual fund distributors and member firms that deal solely with direct participation programs. These member firms would be required to comply with the rule and provide the disclosures to their customers at least once every calendar year (of course, these firms also would be excepted from the proposed rule to the extent such firms are parties to a carrying agreement and the carrying member complies on their behalf). FINRA believes that customers who transact business with these member firms should be provided with the disclosures under the proposed rule.

2. Technical Revisions

In December 2003, FINRA announced that its “Public Disclosure Program” would thereafter be known as “BrokerCheck.” Accordingly, the proposed rule would include references to “BrokerCheck” rather than the “Public Disclosure Program.” The proposed rule also would include references to the FINRA Web site address rather than the NASD Regulation Web site address.

3. Electronic Delivery

The proposed rule would clarify that the information required under the rule may be provided electronically to customers.⁶

Endnotes

1. For more information about the rulebook consolidation process, see *FINRA Information Notice, March 12, 2008* (Rulebook Consolidation Process).
2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
3. Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and the rules thereunder.
4. The current FINRA rulebook consists of two sets of rules: (1) NASD rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules). The Incorporated NYSE Rules apply only to those member firms of FINRA that are also members of the NYSE (Dual Members). Dual Members also must comply with NASD rules.
5. The proposed rule may be renumbered as part of the final Consolidated FINRA Rulebook.
6. See *NASD Notice to Members 98-3* (Electronic Delivery of Information Between Members and Their Customers) (setting forth the policy applicable to electronic delivery of information between member firms and their customers as permitted or required by NASD rules).

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ATTACHMENT A

Below is the text of the proposed rule change. New language is underlined; deletions are in brackets.¹

[2280.] 2267. Investor Education and Protection

[(a)] Each member, except a member that does not have customers or is an introducing firm that is party to a carrying agreement where the carrying firm member complies with this Rule, shall[, with a frequency of not less than] once every calendar year[,] provide in writing (which may be electronic) to each customer the following items of information:

 ([1]a) [NASD Regulation Public Disclosure Program]FINRA BrokerCheck Hotline Number;

 ([2]b) [NASD Regulation]FINRA Web [S]site [A]address; and

 ([3]c) A statement as to the availability to the customer of an investor brochure that includes information describing [the Public Disclosure Program]FINRA BrokerCheck.

[(b)] Notwithstanding the requirement in paragraph (a) above, any member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this Rule.]

1. Attachment A sets forth the text of current NASD Rule 2280 marked to show changes between NASD Rule 2280 and Proposed FINRA Rule 2267.