

SEC Approves New Consolidated FINRA Rule

SEC Approval and Effective Date for New Consolidated FINRA Rule on Trading Ahead of Research Reports

Effective Date: April 20, 2009

Executive Summary

Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (Consolidated FINRA Rulebook), which FINRA has discussed in previous *Information Notices*.¹ FINRA is proposing new consolidated rules in phases for SEC approval as part of the Consolidated FINRA Rulebook.² In January 2009, the SEC approved a new consolidated FINRA Rule relating to trading ahead of research reports, which will take effect on April 20, 2009.

Questions regarding this *Notice* should be directed to:

- Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728- 8451; or
- Matthew E. Vitek, Counsel, OGC, at (202) 728-8156.

Discussion

In January 2009, the SEC approved FINRA Rule 5280 (Trading Ahead of Research Reports) as part of the Consolidated FINRA Rulebook.³ The attachment to this *Notice* sets forth additional information regarding this new consolidated rule and includes a hyperlink to the related rule filing. The filing provides, among other things, FINRA's statement of the purpose of the rule changes and an exhibit showing the changes between the new rule text and the text of the NASD Interpretive Material as it exists in the Transitional Rulebook. Also, the text of the new FINRA Rule is available in the online *FINRA Manual* at www.finra.org/finramanual.⁴

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Notice Type

- Rule Approval
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Research
- Senior Management
- Trading

Key Topics

- Effective Dates of Consolidated Rules
- FINRA Manual
- Research Reports
- Rulebook Consolidation
- Trading Ahead

Referenced Rules & Notices

- FINRA Rule 5200 Series
- FINRA Rule 5280
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Rule Conversion Chart

As discussed in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted a Rule Conversion Chart on FINRA's Web site to help firms become familiar with the new rules and show how the new rules relate to the NASD and/or Incorporated NYSE Rules in the Transitional Rulebook that they will replace.

Firms should be aware that the chart is intended as a reference aid only. FINRA reminds firms that the chart does not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Chart is located at www.finra.org/ruleconversionchart.

Endnotes

- 1 See *Information Notice 10/06/08* (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart); see also *Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 The current FINRA rulebook includes (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules apply to all member firms, unless such rules have a more limited application by their terms. As the Consolidated FINRA Rulebook expands with the SEC's approval and with the new FINRA Rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.
- 3 See Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-054).
- 4 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

Attachment A

Approved FINRA Rule (and Related Rule Filing)

The SEC approved the following new FINRA Rule in January 2009. The effective date is April 20, 2009.

FINRA Rule Filing SR-FINRA-2008-054

www.finra.org/rulefilings/2008-054

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2110-4 (Trading Ahead of Research Reports) as FINRA Rule 5280.

NASD IM-2110-4 states that it is conduct inconsistent with just and equitable principles of trade for a member firm to establish or adjust an inventory position in an exchange-listed security traded over-the-counter or a derivative of such security in anticipation of the issuance of a research report on that security.

The rule change amends the IM in three respects. First, it extends the application of the IM to cover inventory positions with respect to any security—including debt—or derivative thereof, irrespective of whether the security is exchange-listed. Second, the rule change applies the rule only to circumstances where a firm establishes or adjusts its inventory based on non-public advance knowledge of the content or timing of a research report in that security. Finally, the rule change eliminates the option to establish internal controls to manage the flow of information between the research and trading departments, and instead mandates that firms establish policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report and trading personnel.

Rule/Series No.	Rule Title
Rule 5000 Series	Securities Offering and Trading Standards and Practices
Rule 5200 Series	Quotation and Trading Obligations and Practices
Rule 5280	Trading Ahead of Research Reports