

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Date for New Consolidated FINRA Rules on the Transfer of Customer Accounts, Recommendations to Customers in OTC Equity Securities and Anti-Intimidation/Coordination

Effective Date: June 15, 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 approval by the SEC as part of the Consolidated FINRA Rulebook.² In February and March 2009, the SEC approved three new consolidated FINRA Rules on the transfer of customer accounts in the context of employment disputes, recommendations to customers in OTC Equity Securities and anti-intimidation/coordination, which will take effect on June 15, 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 (regarding FINRA Rule 2114);
- Brant Brown, Associate General Counsel, OGC, at (202) 728-6927 (regarding FINRA Rule 5240); or
- Adam Arkel, Assistant General Counsel, OGC, at (202) 728-6961 (regarding FINRA Rule 2140).

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Notice Type

- Rule Approvals
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Senior Management
- Trading

Key Topic(s)

- Anti-Intimidation/Coordination
- Customer Account Transfers
- Effective Dates of Consolidated Rules
- FINRA Manual
- OTC Equity Securities
- Recommendations to Customers
- Rulebook Consolidation

Referenced Rules & Notices

- FINRA Rule 2100 Series
- FINRA Rule 2110 Series
- FINRA Rule 2114
- FINRA Rule 2140
- FINRA Rule 5000 Series
- FINRA Rule 5200 Series
- FINRA Rule 5240
- FINRA Rule 6420
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Discussion

In February and March 2009, the SEC approved three FINRA Rules as part of the Consolidated FINRA Rulebook:

- ▶ Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes);³
- ▶ Rule 2114 (Recommendations to Customers in OTC Equity Securities);⁴ and
- ▶ Rule 5240 (Anti-Intimidation/Coordination).⁵

The attachment to this *Notice* sets forth additional information regarding these new consolidated rules and includes a hyperlink to each related rule filing. The filings provide, 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 rule as it exists in the Transitional Rulebook. Also, the text of each new FINRA Rule is available in the online *FINRA Manual* at www.finra.org/finramanual.⁶

Rule Conversion Chart

As discussed in additional detail in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted a Rule Conversion Chart on its 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 consists of (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. 59495* (March 3, 2009), 74 FR 10632 (March 11, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-052); *see also Exchange Act Release No. 59495A* (March 18, 2009), 74 FR 12417 (March 24, 2009) (Order Correcting Exchange Act Release No. 59495).
- 4 *See Exchange Act Release No. 59605* (March 19, 2009), 74 FR 13283 (March 26, 2009) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change; File No. SR-FINRA-2008-055).
- 5 *See Exchange Act Release No. 59335* (February 2, 2009), 74 FR 6335 (February 6, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-061).
- 6 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

Attachment A

List of Approved FINRA Rules (and Related Rule Filings)

The SEC approved the following new FINRA Rules in February and March 2009. The effective date of these rules is June 15, 2009.

FINRA Rule Filing SR-FINRA-2008-052

www.finra.org/rulefilings/2008-052

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2110-7 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as FINRA Rule 2140.

NASD IM-2110-7 states that it is inconsistent with just and equitable principles of trade for a member firm or person associated with a member firm to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. IM-2110-7 further states that nothing in the Interpretation affects the operation of NASD Rule 11870 (Customer Account Transfer Contracts).

The rule change transfers NASD IM-2110-7, with conforming revisions, into the Consolidated FINRA Rulebook as stand-alone FINRA Rule 2140 rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).¹

RULE/SERIES NO.	RULE TITLE
Rule 2100 Series	TRANSACTIONS WITH CUSTOMERS
Rule 2140	Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

¹ FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. See Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

FINRA Rule Filing SR-FINRA-2008-055

www.finra.org/rulefilings/2008-055

The rule change adopts, with certain modifications, NASD Rule 2315 (Recommendations to Customers in OTC Equity Securities) as FINRA Rule 2114.

NASD Rule 2315 addresses potential fraud and abuse in transactions involving securities not listed on an exchange and certain other higher-risk securities. The rule, which supplements existing FINRA rules and the federal securities laws, requires a member to conduct a due diligence review of an issuer's current financial statements and current material business information before recommending the purchase or short sale of a security that is published in a "quotation medium" and is either (1) not listed on NASDAQ or a national securities exchange or (2) listed on a regional securities exchange and does not qualify for dissemination of transaction reports via the Consolidated Tape.

The rule change transfers NASD Rule 2315 into the Consolidated FINRA Rulebook as FINRA Rule 2114 and amends NASD Rule 2315 in four respects.

- First, the rule change expands the scope of the rule to cover a recommendation to purchase or sell short any OTC Equity Security (as defined in FINRA Rule 6420), irrespective of whether the security is published in a quotation medium.
- Second, the rule change adds a definition of "current material business information" to include "information that is ascertainable through the reasonable exercise of professional diligence and that a reasonable person would take into account in reaching an investment decision."
- Third, the rule change eliminates the exemption from the rule for a security with a worldwide average daily trading volume value of at least \$100,000 during each of the six calendar months preceding the recommendation, as well as the related exemption for a convertible security where the underlying security satisfies the trading volume exemption requirements.
- Finally, the rule change permits the required review to be conducted by a General Securities Principal (Series 24) or a General Securities Sales Supervisor (Series 8 or 9/10), or someone supervised by a General Securities Principal or General Securities Sales Supervisor. If the person designated to perform the review is not registered as a General Securities Principal or General Securities Sales Supervisor, the member must document the name of the General Securities Principal or General Securities Sales Supervisor who supervised the designated person.

RULE/SERIES NO.	RULE TITLE
Rule 2100 Series	TRANSACTIONS WITH CUSTOMERS
Rule 2110 Series	Recommendations
Rule 2114	Recommendations to Customers in OTC Equity Securities

FINRA Rule Filing SR-FINRA-2008-061

www.finra.org/rulefilings/2008-061

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2110-5 (Anti-Intimidation/Coordination) as FINRA Rule 5240.

NASD IM-2110-5 identifies three general types of conduct that are inconsistent with just and equitable principles of trade:

- ▶ coordinating activities by member firms involving quotations, prices, trades and trade reporting (*e.g.*, agreements to report trades inaccurately or maintain current minimum spreads);
- ▶ directing or requesting another member firm to alter prices or quotations; and
- ▶ engaging in conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member firm or associated person of a member firm.

The rule change transfers IM-2110-5, with conforming revisions, into the Consolidated FINRA Rulebook as stand-alone FINRA Rule 5240 rather than as interpretive material to NASD Rule 2110.² The rule change also adds the phrase “or other person” to two paragraphs of the rule to clarify that coordination with or intimidation of a non-FINRA member firm is also prohibited.

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 5240	Anti-Intimidation/Coordination

² See *id.*