

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Date for New Consolidated FINRA Rules

Effective Date: August 17, 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 April and May 2009, the SEC approved eight new consolidated FINRA Rules, which will take effect on August 17, 2009.

Questions regarding this *Notice* should be directed to:

- Erika L. Lazar, Senior Attorney, Office of General Counsel (OGC), at (646) 315-8512 (regarding FINRA Rule 2267);
- Stan Macel, Assistant General Counsel, OGC, at (202) 728-8056 (regarding FINRA Rules 2080, 2266, 2310, 2342, 3250 and 4551); or
- Matthew E. Vitek, Counsel, OGC, at (202) 728-8156 (regarding FINRA Rule 1122).

June 2009

Notice Type

- Rule Approvals
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Mutual Fund
- Operations
- Registration
- Senior Management
- Trading

Key Topic(s)

- Alternative Trading Systems
- CRD System
- Designation of Accounts
- Direct Participation Programs
- Effective Dates of Consolidated Rules
- FINRA Manual
- Investment Company Securities
- Investor Education
- Investor Protection
- Membership
- Registration
- Rulebook Consolidation
- Security Futures
- SIPC

Referenced Rules & Notices

- FINRA Rule 1122
- FINRA Rule 2080
- FINRA Rule 2266
- FINRA Rule 2267
- FINRA Rule 2310
- FINRA Rule 2342
- FINRA Rule 3250
- FINRA Rule 4551
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Discussion

In April and May 2009, the SEC approved eight FINRA Rules as part of the Consolidated FINRA Rulebook:

- ▶ Rule 1122 (Filing of Misleading Information as to Membership or Registration);³
- ▶ Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System);⁴
- ▶ Rule 2266 (SIPC Information);⁵
- ▶ Rule 2267 (Investor Education and Protection);⁶
- ▶ Rule 2310 (Direct Participation Programs);⁷
- ▶ Rule 2342 (“Breakpoint” Sales);⁸
- ▶ Rule 3250 (Designation of Accounts);⁹ and
- ▶ Rule 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures).¹⁰

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 and/or Incorporated NYSE Rules as they exist in the Transitional Rulebook. Also, the text of each new FINRA Rule is available in the online *FINRA Manual* at www.finra.org/finramanual.¹¹

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. 59789 (April 20, 2009), 74 FR 18767 (April 24, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-009).
- 4 See Exchange Act Release No. 59987 (May 27, 2009), 74 FR 26902 (June 4, 2009) (Order Approving Proposed Rule Change as Amended; File No. SR-FINRA-2009-016).
- 5 See *id.*
- 6 See Exchange Act Release No. 60012 (May 29, 2009), 74 FR 27214 (June 8, 2009) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2008-062).
- 7 See *supra* note 4.
- 8 See Exchange Act Release No. 59961 (May 21, 2009), 74 FR 25795 (May 29, 2009) (Order Granting Approval of Proposed Rule Change; File No. SR-FINRA-2009-018).
- 9 See Exchange Act Release No. 59947 (May 20, 2009), 74 FR 25293 (May 27, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-017).
- 10 See *supra* note 4.
- 11 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 April and May 2009. The effective date of these rules is August 17, 2009.

FINRA Rule Filing SR-FINRA-2008-062

www.finra.org/rulefilings/2008-062

The rule change adopts FINRA Rule 2267 based on NASD Rule 2280 (Investor Education and Protection).

FINRA Rule 2267 requires member firms, except a 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 requirements of the rule, to provide customers with FINRA's Web site address and information regarding FINRA's BrokerCheck® program at least once every calendar year. Member firms that conduct a limited business in which contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member, and thereafter do not carry customer accounts or hold customer funds and securities (*e.g.*, do not provide account statements or trade confirmations) may furnish a customer with the information required by the rule at or prior to the time of the customer's initial purchase, in lieu of once every calendar year. The rule also clarifies that the information required under the rule may be provided electronically to customers.

Any firm subject to NASD Rule 2280 that complies with its annual (calendar year) mailing requirement on or after January 1, 2009 but prior to the August 17, 2009 effective date of FINRA Rule 2267 will be deemed to have complied with FINRA Rule 2267 for the 2009 calendar year.

RULE/SERIES NO.	RULE TITLE
Rule 2200 Series	COMMUNICATIONS AND DISCLOSURES
Rule 2260 Series	Disclosures
Rule 2267	Investor Education and Protection

FINRA Rule Filing SR-FINRA-2009-009

www.finra.org/rulefilings/2009-009

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 1000-1 (Filing of Misleading Information as to Membership or Registration) as FINRA Rule 1122.

NASD IM-1000-1 provides that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

The rule change transfers NASD IM-1000-1 into the Consolidated FINRA Rulebook as FINRA Rule 1122, and clarifies its applicability to members and persons associated with members by specifying that “no member or person associated with a member” shall file incomplete or misleading membership or registration information. Additionally, the rule change eliminates the reference to the filing of registration information “as to Registered Representative” to clarify that the rule applies to the filing of registration information regarding any category of registration. Finally, the rule change deletes the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the adoption of the NASD IM as a stand-alone rule.

RULE/SERIES NO.	RULE TITLE
Rule 1000 Series	MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION
Rule 1100 Series	MEMBER APPLICATION
Rule 1120 Series	Member Application Process
Rule 1122	Filing of Misleading Information as to Membership or Registration

FINRA Rule Filing SR-FINRA-2009-016

www.finra.org/rulefilings/2009-016

The rule change adopts, without material change:

- ▶ NASD Rule 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)) as FINRA Rule 2080;
- ▶ NASD Rule 2810 (Direct Participation Programs) as FINRA Rule 2310;
- ▶ NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA Rule 4551; and
- ▶ NASD Rule 2342 (SIPC Information) as FINRA Rule 2266, and deletes comparable Incorporated NYSE Rule 409A (SIPC Disclosures).

FINRA Rule 2080 addresses the expungement of customer dispute information from the Central Registration Depository (CRD[®]) system. The rule requires that a court of competent jurisdiction order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system. It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement. Upon request, however, FINRA may waive the requirement to be named as a party in certain specified circumstances.

FINRA Rule 2310 requires, among other things, that members participating in a public offering of direct participation programs and unlisted real estate investment trusts (collectively, Investment Programs) (1) meet certain requirements regarding underwriting compensation, fees and expenses; (2) perform due diligence on the Investment Programs; (3) follow specific guidelines on suitability; and (4) adhere to limits on non-cash compensation.

FINRA Rule 4551 requires alternative trading systems (ATs) that accept orders for security futures to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule provides FINRA with an audit trail of orders for security futures placed on an ATS.

FINRA Rule 2266 requires all FINRA members, except those members (1) that are excluded from membership in the Securities Investor Protection Corporation (SIPC) and are not SIPC members; or (2) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. In addition, such members must provide all customers with the same information, in writing, at least once each year.

RULE/SERIES NO.	RULE TITLE
Rule 2000 Series	DUTIES AND CONFLICTS
Rule 2080	Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System
Rule 2200 Series	COMMUNICATIONS AND DISCLOSURES
Rule 2260 Series	Disclosures
Rule 2266	SIPC Information
Rule 2300 Series	SPECIAL PRODUCTS
Rule 2310	Direct Participation Programs
Rule 4500 Series	BOOKS, RECORDS AND REPORTS
Rule 4550 Series	ATS Reporting
Rule 4551	Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures

FINRA Rule Filing SR-FINRA-2009-017

www.finra.org/rulefilings/2009-017

The rule change adopts, with certain modifications, Incorporated NYSE Rule 406 (Designation of Accounts) as FINRA Rule 3250.

FINRA Rule 3250 provides that no member shall carry an account on its books in the name of a person other than that of the customer, except that an account may be designated by a number or symbol, provided the member has on file a written statement signed by the customer attesting the ownership of such account.

In effect, the rule provides that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer. Formerly, Incorporated NYSE Rule 406 applied only to Dual Members; FINRA Rule 3250 applies to all FINRA member firms.

RULE/SERIES NO.	RULE TITLE
Rule 3000 Series	SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS
Rule 3200 Series	RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS
Rule 3250	Designation of Accounts

FINRA Rule Filing SR-FINRA-2009-018

www.finra.org/rulefilings/2009-018

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2830-1 (“Breakpoint” Sales) as FINRA Rule 2342.

FINRA Rule 2342 prohibits sales of mutual fund shares in amounts below a “breakpoint” if such sales are made “so as to share in the higher sales charges.” In the context of mutual fund sales, a “breakpoint” is that point at which the sales charge is reduced for quantity purchases of fund shares. The rule change eliminates the references to “just and equitable principles of trade,” makes other minor changes to the text to reflect that it is a stand-alone rule and eliminates certain redundant text that is inconsistent with a more rules-based format.

RULE/SERIES NO.	RULE TITLE
Rule 2300 Series	SPECIAL PRODUCTS
Rule 2340 Series	Investment Companies
Rule 2342	“Breakpoint” Sales