

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Dates for New Consolidated FINRA Rules on Electronic Filing Requirements for Uniform Forms and Arbitration Disclosures

Effective Date (FINRA Rule 1010): July 27, 2009

Effective Date (FINRA Rule 2263): September 25, 2009

Executive Summary

The SEC recently approved the adoption of NASD Rule 1140, subject to certain amendments, as new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms). FINRA Rule 1010 supports the information reported by firms to Web CRD and, among other things, permits a firm to file amendments to Form U4 disclosure information without obtaining the associated person's manual signature, subject to specified conditions (the mandatory signature exception).¹ The effective date of FINRA Rule 1010 is July 27, 2009.²

The SEC also approved the adoption of NASD Rule 3080, subject to minor amendments, as new FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4). FINRA Rule 2263 requires firms to provide each associated person with arbitration disclosures whenever the firm asks an associated person, pursuant to FINRA Rule 1010, to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the Form U4. The effective date of FINRA Rule 2263 is September 25, 2009, to provide firms with additional time to make the necessary changes to forms and any related systems to reflect the slightly revised disclosure language.

The text of the rule amendments are set forth in Attachment A.

July 2009

Notice Type

- Rule Approvals
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Training

Key Topics

- Arbitration Disclosures
- Central Registration Depository (CRD®)
- Electronic Filing Requirements
- Form U4
- Form U5
- Regulatory Disclosure Questions

Referenced Rules & Notices

- FINRA Rule 1010
- FINRA Rule 2263
- NASD Rule 1140
- NASD Rule 3080
- NTM 99-63
- Regulatory Notice 09-16
- Regulatory Notice 09-23
- SEA Rule 17a-4

Questions concerning this *Notice* should be directed to:

- ▶ Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- ▶ Patricia Albrecht, Assistant General Counsel, Office of General Counsel, at (202) 728-8026.

Background

Web CRD is an interactive, Web-based registration system that maintains the qualification, employment and disclosure information of more than half a million registered persons, and it facilitates the processing of fingerprint submissions, registration fees and renewal fees.³ The SEC recently approved the adoption of NASD Rule 1140, subject to certain amendments, as new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms). FINRA Rule 1010 supports the information reported by firms to Web CRD.

The SEC also approved the adoption of NASD Rule 3080, subject to minor amendments, as new FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4). FINRA Rule 2263 requires firms to provide each associated person with arbitration disclosures whenever the firm asks an associated person, pursuant to FINRA Rule 1010, to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the Form U4.

Discussion

FINRA Rule 1010

Uniform Form Filing and Signature Requirements

FINRA Rule 1010(a) retains, without substantive changes, the requirement in NASD Rule 1140 that each firm file Forms U4, U5, BR, BDW and BD amendments (collectively, the Uniform Forms) electronically (or via another process that FINRA may prescribe) to Web CRD. In addition, FINRA Rule 1010(c) retains the requirement in NASD Rule 1140 that an initial and transfer electronic Form U4 be based on a signed Form U4,⁴ and codifies FINRA's position that such electronic documents be based on an original, manually signed Form U4 provided to the firm by the person on whose behalf the Form U4 is being filed.⁵ FINRA believes it is important to have clear evidence of the associated person's execution of the initial and transfer Forms U4, including his or her agreement to the attestations set forth in the form.

FINRA Rule 1010(c), however, modifies the signature requirement with respect to amendments to disclosure information in the Form U4.⁶ Previously, Form U4 disclosure information amendments had to be manually signed by the associated person on whose behalf the filing was being made. FINRA Rule 1010 permits a firm to file amendments to the Form U4 disclosure information without obtaining the registered person's manual signature if the firm uses reasonable efforts to:

- provide the registered person with a copy of the amended disclosure information prior to filing; and
- obtain the registered person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed.⁷

FINRA Rule 1010(c) also requires a firm, as part of its recordkeeping requirements, to retain the written acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.⁸

FINRA Rule 1010(c) also clarifies a firm's responsibility to submit disclosure information of which it has knowledge in those cases where the firm is not able to obtain an associated person's manual signature or written acknowledgement of the amendment.⁹ This provision codifies the firm's obligation to submit such disclosure information, consistent with the obligation under the FINRA By-Laws that every Form U4 be kept current.¹⁰ Supplementary Material .03 (Filing of Amendments Involving Disclosure Information) sets forth examples of reasons why a firm may not be able to obtain the associated person's manual signature or written acknowledgement. They include, but are not limited to, the associated person:

- refusing to acknowledge the information in writing;
- being on active military duty; or
- otherwise being unavailable during the period provided for filing the amendment.

In such instances, a firm should enter "Representative Refused to Sign/Acknowledge," "Representative Not Available" or a substantially similar entry in the signature box of the electronic form. This instruction is generally consistent with current practice in instances where an associated person is unable or unavailable to sign a disclosure information amendment.¹¹

In addition, FINRA Rule 1010(c) incorporates Web CRD's current practice of permitting Form U4 administrative information to be amended without obtaining the associated person's signature (manual or otherwise).¹² Supplementary Material .04 (Filing of Amendments Involving Disclosure Information) explains that administrative information includes such items as the addition of state or self-regulatory organization registrations, exam scheduling and updates to residential, business and personal history.

Finally, FINRA Rule 1010 incorporates, without substantive change, NASD Rule 1140's provisions regarding the submission of fingerprint information and Form U5 filing requirements, and notes the applicable retention periods for Form U5 under SEA Rule 17a-4.¹³

Supervisory Requirements

FINRA Rule 1010(b) retains NASD Rule 1140's requirement that each firm identify a registered principal(s) or corporate officer(s) who has a position of authority over registration functions to be responsible for supervising the firm's electronic filings pursuant to the rule. Supplementary Material .01 (Delegation of Electronic Filing Functions) permits the registered principal(s) or corporate officer(s) who is responsible for supervising a firm's electronic filings to delegate to another associated person (who need not be registered) the electronic filing of the firm's forms via Web CRD. The Supplementary Material, however, makes clear that the principal(s) or corporate officer(s) may not delegate any of the supervision, review and approval responsibilities and must take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

FINRA Rule 1010 also retains as Supplementary Material .02 (Third-Party Agreements), NASD Rule 1140's provision that a firm may use third parties to file forms electronically on behalf of the firm and its associated persons, but makes clear that, notwithstanding the existence of such an arrangement, the firm remains responsible for complying with FINRA Rule 1010.

Effective Date

FINRA Rule 1010 is effective July 27, 2009. Firms may choose to rely on FINRA Rule 1010's mandatory signature exception to comply with recent amendments to Form U4 that, among other things, added new regulatory disclosure information questions (relating to willful violations) to the Form that must be answered by November 14, 2009.¹⁴ These new disclosure questions will require firms to amend (or refile) the Forms U4 that they have submitted on behalf of their registered persons. Firms have represented that this requirement to amend the Forms U4 for their registered persons will place a significant additional administrative burden on firms in completing the amendments. FINRA believes that such burden may be alleviated in part by FINRA Rule 1010's mandatory signature exception.

FINRA Rule 2263

Nearly identical to NASD Rule 3080, FINRA Rule 2263 requires firms to provide each associated person with certain written disclosures regarding the nature and process of arbitration proceedings whenever the firm asks an associated person, pursuant to FINRA Rule 1010, to manually sign a new or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the form. FINRA Rule 2263 makes no significant changes to the required disclosures other than updating the disclosure language to reflect recent amendments to FINRA's Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes requiring arbitrators to provide an explained decision to the parties in eligible cases if there is a joint request by all parties at least 20 days before the first scheduled hearing date.¹⁵ The effective date of FINRA Rule 2263 is September 25, 2009, to provide firms with additional time to make the necessary changes to forms and any related systems to reflect the modified disclosure language.

Endnotes

- 1 See Exchange Act Release No. 60348 (July 20, 2009), 74 FR 37077 (July 27, 2009) (SEC Order Approving SR-FINRA-2009-019).
- 2 FINRA notes that it is deviating from the protocol by which FINRA generally announces the effective dates of the new FINRA rules that are being adopted as part of the consolidated rulebook in establishing the effective dates of FINRA Rules 1010 and 2263. See *Information Notice 10/06/08* (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart). As further discussed in this Notice, FINRA is establishing a July 27, 2009 effective date for FINRA Rule 1010 to, among other things, allow firms to promptly avail themselves of the mandatory signature exception.
- 3 The CRD system, which was developed jointly by FINRA and the North American Securities Administrators Association (NASAA), was first launched in 1981 to centralize the registration process for the securities industry. During the last two decades, FINRA has expanded and modified the system extensively to meet the evolving needs of its constituents. CRD became an interactive, Web-based registration system (Web CRD) on August 16, 1999. See *NTM 99-63* (August 1999) (SEC Approves and Adopts Revised Forms and Electronic Filing Requirement; New Member Applicants Should Continue to File Paper Forms).
- 4 Under the CRD system, the firm submits the electronic Form U4 on behalf of the associated person by typing the person's name into the signature box on the electronic form.
- 5 FINRA Rule 1010(c)(1). In addition, FINRA Rule 1010(c) clarifies that initial and amendments to Forms U4 must be retained until at least three years after the registered person's employment and any other connection with the firm has terminated. See Rule 17a-4(e)(1) under the Securities Exchange Act of 1934 (SEA).
- 6 FINRA Rule 1010(c)(2).
- 7 FINRA Rule 1010(c)(2)(A) and (B).
- 8 FINRA Rule 1010(c)(2)(B). In February 2008, at FINRA's request, the SEC staff issued a no-action letter regarding the ability of FINRA member firms to rely on Web CRD to satisfy their record retention requirements under SEA Rule 17a-4 with respect to certain Forms U4, U5 and BR filed in Web CRD. See Letter from Thomas K. McGowan, Assistant Director, Division of Trading and Markets, SEC, to Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, February 19, 2008 (www.sec.gov/divisions/marketreg/mr-noaction/2008/finra021908.pdf).

In short, such relief extends to, among other things, Form U4 amendments that do not require the registered person's signature. Because FINRA's request for no-action relief excluded Form U4 amendments that provide or update disclosure information (on the basis that such amendments required the registered person's signature), FINRA sought clarification from SEC staff on the extent of the relief in light of the mandatory signature exception set forth in (then proposed) FINRA Rule 1010. SEC staff has affirmed in a conversation with FINRA staff that the no-action relief provided in the February 19, 2008, letter will extend to Form U4 amendments that provide or update disclosure information that is submitted pursuant to FINRA Rule 1010 without obtaining the registered person's manual signature. Telephone conversation between Thomas K. McGowan, Assistant Director, Division of Trading and Markets, SEC, and Patrice Gliniecki, Senior Vice President & Deputy General Counsel and Richard E. Pullano, Associate Vice President & Chief Counsel, Registration and Disclosure, FINRA, March 5, 2009.

- 9 FINRA Rule 1010(c)(3).
- 10 FINRA By-Laws Article V, Section 2.
- 11 FINRA will consider future enhancements to the CRD system that may include incorporating a “drop down” menu, or some substantially similar method for recording the reason the registered person has not acknowledged the filing, to assist firms in completing the signature section in these circumstances.
- 12 FINRA Rule 1010(c)(4); *see also* Exchange Act Release No. 41575 (June 29, 1999), 64 FR 36728, 36729 n.7 (July 7, 1999) (SEC Order Approving SR-NASD-99-28); Exchange Act Release No. 37439 (July 15, 1996), 61 FR 37950 (July 22, 1996) (SEC Order Approving SR-NASD-96-21).
- 13 *See* FINRA Rule 1010(d) (Fingerprint Information) and (e) (Form U5 Filing Requirements).
- 14 *See* Exchange Act Release No. 60086 (June 10, 2009); 74 FR 28743 (June 17, 2009) (SEC Order Approving SR-FINRA-2009-008); *see also* *Regulatory Notice 09-23* (May 2009).
- 15 *See* Exchange Act Release No. 59358 (Feb. 4, 2009), 74 FR 6928 (Feb. 11, 2009) (Order Approving File No. SR-FINRA-2008-051); *see also* *Regulatory Notice 09-16* (March 2009).

Attachment A

Below is the text of new FINRA Rules 1010 and 2263. New rule language is underlined; deletions are in brackets.

* * * * *

1000. Member Application and Associated Person Registration

[1140] 1010. Electronic Filing [Rules]Requirements for Uniform Forms

(a) Filing Requirement

Except as provided in NASD Rule 1013(a)(2), all forms required to be filed by Article IV, Sections 1, 7, and 8, and Article V, Sections 2 and 3, of the FINRA By-Laws shall be filed through an electronic process or such other process [the Association]FINRA may prescribe to the Central Registration Depository.

(b) Supervisory Requirements

(1) In order to comply with the supervisory procedures requirement in NASD Rule 3010, each member shall identify a [R]registered [P]principal(s) or corporate officer(s) who has a position of authority over registration functions, to be responsible for supervising the electronic filing of appropriate forms pursuant to this Rule.

(2) The [R]registered [P]principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to this Rule shall be required to acknowledge, electronically, that he is filing this information on behalf of the member and the member's associated persons.

(c) Form U4 Filing Requirements

(1) Except as provided in paragraphs (c)(2) and (c)(3) below, [E]very initial and transfer electronic Form U4 filing and any amendments to the disclosure information on Form U4 shall be based on a manually signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the member's recordkeeping requirements, it shall retain the person's manually signed Form U4 or amendments to the disclosure information on Form U4 in accordance with SEA Rule 17a-4(e)(1) and make [it] them available promptly upon regulatory request. An applicant for membership

also [must] shall retain in accordance with SEA Rule 17a-4(e)(1) every manually signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) A member may file electronically amendments to the disclosure information on Form U4 without obtaining the subject associated person's manual signature on the form, provided that the member shall use reasonable efforts to:

(A) provide the associated person with a copy of the amended disclosure information prior to filing; and

(B) obtain the associated person's written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed. As part of the member's recordkeeping requirements, the member shall retain this acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.

(3) In the event a member is not able to obtain an associated person's manual signature or written acknowledgement of amended disclosure information on Form U4 prior to filing of such information pursuant to paragraph (c)(1) or (2), the member is obligated to file the disclosure information as to which it has knowledge in accordance with Article V, Section 2 of the FINRA By-Laws. The member shall use reasonable efforts to provide the associated person with a copy of the amended disclosure information that was filed.

(4) A member may file electronically amendments to administrative data on Form U4 without obtaining the subject associated person's signature on the form. The member shall use reasonable efforts to provide the associated person with a copy of the amended administrative information that was filed.

[(2)](d) Fingerprint [Cards]Information

Upon filing an electronic Form U4 on behalf of a person applying for registration, a member shall promptly submit [a] fingerprint [card]information for that person. [NASD]FINRA may make a registration effective pending receipt of the fingerprint [card]information. If a member fails to submit [a] the fingerprint [card]information within 30 days after [NASD]FINRA receives the electronic Form U4, the person's registration shall be deemed inactive. In such case, [NASD]FINRA shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring

registration. [NASD]FINRA shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the NASD Rule 1020 Series and the NASD Rule 1030 Series. Upon application and a showing of good cause, FINRA[NASD] may extend the 30-day period.

[(d)](e) Form U[-]5 Filing Requirements

Initial filings and amendments of Form U[-]5 shall be submitted electronically. As part of the member's recordkeeping requirements, it shall retain such records for a period of not less than three years, the first two years in an easily accessible place, in accordance with SEA Rule 17a-4, and make such records available promptly upon regulatory request.

[(e) Third Party Filing]

[A member may employ a third party to file the required forms electronically on its behalf.]

• • • Supplementary Material: -----

.01 Delegation of Electronic Filing Functions. The designated registered principal(s) or corporate officer(s) required by paragraph (b)(1) to supervise the member's electronic filings may delegate to an associated person (who need not be registered) the electronic filing of the member's appropriate forms via Web CRD. The registered principal(s) or corporate officer(s) responsible for supervising the member's electronic filings may also delegate to the associated person making the electronic filings the requirement in paragraph (b)(2) to acknowledge, electronically, that he is making the filing on behalf of the member and the member's associated persons. However, the registered principal(s) or corporate officer(s) may not delegate any of the supervision, review, and approval responsibilities mandated in paragraphs (b)(1) and (2) and shall take reasonable and appropriate action to ensure that all delegated electronic filing functions are properly executed and supervised.

.02 Third-Party Agreements. A member may enter into an agreement with a third party pursuant to which the third party agrees to file the required forms electronically on behalf of the member and the member's associated persons. Notwithstanding the existence of such an agreement, the member remains responsible for complying with the requirements of this Rule.

.03 Filing of Amendments Involving Disclosure Information. In the event a member is not able to obtain an associated person’s manual signature or written acknowledgement of amended disclosure information on that person’s Form U4 prior to filing of such amendment reflecting the information pursuant to paragraph (c)(3) (examples of reasons why a member may not be able to obtain the manual signature or written acknowledgement may include, but are not limited to, the associated person refuses to acknowledge such information, is on active military service or otherwise is unavailable during the period provided for filing of such amendments under Article V of the FINRA By-Laws), the member shall enter “Representative Refused to Sign/Acknowledge” or “Representative Not Available” or a substantially similar entry in the electronic Form U4 field for the associated person’s signature.

.04 Filing of Amendments Involving Administrative Information. For purposes of paragraph (c)(4) of the Rule, administrative data includes such items as the addition of state or self-regulatory organization registrations, exam scheduling, and updates to residential, business and personal history.

* * * * *

2000. Duties and Conflicts

* * * * *

2200. Communications and Disclosures

* * * * *

2260. Disclosures

* * * * *

[3080] 2263. Arbitration Disclosure to Associated Persons [When] Signing or Acknowledging Form U[-]4

A member shall provide an associated person with the following written statement whenever the associated person is asked, pursuant to FINRA Rule 1010, to manually sign an [new] initial or amended Form U4, or to otherwise provide written (which may be electronic) acknowledgement of an amendment to the Form U4[.]:

The Form U4 contains a predispute arbitration clause. It is in item 5 of Section 15A of the Form U4. You should read that clause now. Before signing the Form U4, you should understand the following:

(1) You are agreeing to arbitrate any dispute, claim or controversy that may arise between you and your firm, or a customer, or any other person[,] that is required to be arbitrated under the rules of the self-regulatory organizations with which you are registering. This means you are giving up the right to sue a member, customer, or another associated person in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) A claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute is not required to be arbitrated under [NASD] FINRA rules. Such a claim may be arbitrated at [the NASD] FINRA only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

(3) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(4) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(5) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(6) The panel of arbitrators may include arbitrators who were or are affiliated with the securities industry or[,] public arbitrators, as provided by the rules of the arbitration forum in which a claim is filed.

(7) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

* * * * *