

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Date for New Consolidated FINRA Rules

Effective Date (FINRA Rule 2320): October 19, 2009

Effective Date (Repeal of Incorporated NYSE Rules 134 and 440I): 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 June and July 2009, the SEC approved two rule filings relating to the Consolidated FINRA Rulebook. New FINRA Rule 2320 will take effect on October 19, 2009. The repeal of Incorporated NYSE Rules 134 and 440I will take effect on August 17, 2009.

Questions regarding this *Notice* should be directed to:

- Kosha Dalal, Associate Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6903 (regarding the repeal of Incorporated NYSE Rules 134 and 440I); or
- Stan Macel, Assistant General Counsel, OGC, at (202) 728-8056 (regarding FINRA Rule 2320).

August 2009

Notice Type

- Rule Approvals
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

- Effective Dates of Consolidated Rules
- FINRA Manual
- Rulebook Consolidation
- Variable Annuity Contracts
- Variable Life Insurance

Referenced Rules & Notices

- FINRA Rule 2320
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Discussion

In June 2009, the SEC approved new consolidated FINRA Rule 2320 (Variable Contracts of an Insurance Company), which will take effect on October 19, 2009.³

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 change 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 the new FINRA Rule is available in the online FINRA Manual at www.finra.org/finramanual.⁴

The attachment to this *Notice* further summarizes an additional rule filing relating to the Consolidated FINRA Rulebook approved by the SEC in July 2009. The rule filing addresses FINRA's repeal of Incorporated NYSE Rules 134 (Differences and Omissions – Cleared Transactions) and 440I (Records of Compensation Arrangements – Floor Brokerage) as part of the process of developing the Consolidated FINRA Rulebook.⁵ The repeal of Incorporated NYSE Rules 134 and 440I will take effect on August 17, 2009.

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. 60086* (June 10, 2009), 74 FR 28743 (June 17, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-023).
- 4 FINRA updates the rule text on its online Manual within two business days of SEC approval of changes to the rule text.
- 5 *See Exchange Act Release No. 60367* (July 22, 2009), 74 FR 38077 (July 30, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-038).

Attachment A

List of Approved FINRA Rules (and Related Rule Filings)

The SEC approved the following rule filings relating to the Consolidated FINRA Rulebook in June and July 2009. The effective date of new FINRA Rule 2320 (SR-FINRA-2009-023) is October 19, 2009. The effective date of the repeal of Incorporated NYSE Rules 134 and 440I (SR-FINRA-2009-038) is August 17, 2009.

FINRA Rule Filing SR-FINRA-2009-023

www.finra.org/rulefilings/2009-023

The rule change adopts, with certain modifications, NASD Rule 2820 (Variable Contracts of an Insurance Company) as FINRA Rule 2320.

FINRA Rule 2320 regulates member firms in connection with the sale and distribution of variable life insurance and variable annuity contracts (together, variable contracts). It prohibits member firms from participating in the offer or sale of a variable contract unless certain conditions are met. It also regulates member compensation in connection with the sale and distribution of variable contracts, including both cash and non-cash compensation arrangements. The rule change requires members to determine and keep records of the value of non-cash compensation received from offerors in all cases (as opposed to NASD Rule 2820, which requires members to provide and keep records for the value of non-cash compensation only “if known”). Member firms are permitted to estimate the actual value of non-cash compensation for which a receipt (or similar documentation) assigning a value is not available. The rule change also makes certain non-substantive, technical changes to the rule to reflect FINRA’s corporate name and the new format of the Consolidated FINRA Rulebook.

Rule/Series No.	Rule Title
Rule 2000 Series	DUTIES AND CONFLICTS
Rule 2300 Series	SPECIAL PRODUCTS
Rule 2320	Variable Contracts of an Insurance Company

FINRA Rule Filing SR-FINRA-2009-038

www.finra.org/rulefilings/2009-038

The rule change repeals Incorporated NYSE Rule 134 (Differences and Omissions – Cleared Transactions) and Incorporated NYSE Rule 440I (Records of Compensation Arrangements – Floor Brokerage) to remove requirements that are specific to the NYSE marketplace and relate primarily to activities by floor brokers.