

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Date for New Consolidated FINRA Rules

Effective Date: April 19, 2010

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 January, the SEC approved three new consolidated FINRA rules, all of which take effect on April 19, 2010.

Questions regarding this *Notice* should be directed to:

- Brant Brown, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6927 (regarding FINRA Rule 5330);
- Erika Lazar, Senior Attorney, OGC, at (202) 728-8013 (regarding FINRA Rule 5160); or
- Matthew Vitek, Counsel, OGC, at (202) 728-6961 (regarding FINRA Rule 4570).

February 2010

Notice Type

- Consolidated Rulebook
- Rule Approval

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Adjustment of Orders
- Books and Records
- Selling Agreements

Referenced Rules & Notices

- FINRA Rule 4570
- FINRA Rule 5160
- FINRA Rule 5330
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Background & Discussion

In January 2010, the SEC approved three FINRA rules as part of the Consolidated FINRA Rulebook:

- ▶ Rule 4570 (Custodian of Books and Records);³
- ▶ Rule 5160 (Disclosure of Price and Concessions in Selling Agreements);⁴ and
- ▶ Rule 5330 (Adjustment of Orders).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 Charts

As discussed in additional detail in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted three Rule Conversion Charts 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 charts are intended as a reference aid only. FINRA reminds firms that the charts do not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Charts are 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. 61332 (January 12, 2010); 75 FR 3270 (January 20, 2010) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-080).
- 4 *See* Exchange Act Release No. 61417 (January 25, 2010); 75 FR 5157 (February 1, 2010) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-086).
- 5 *See* Exchange Act Release No. 61338 (January 12, 2010); 75 FR 2899 (January 19, 2010) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-084).
- 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 Rules (and Related Rule Filings)

The SEC approved the following new FINRA Rules in January 2010. The effective date of all of the rules is April 19, 2010.

FINRA Rule Filing SR-FINRA-2009-080

www.finra.org/rulefilings/2009-080

FINRA Rule 4570

The rule change adopts, with minor changes, NASD Rule 3121 (Custodian of the Record) as FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook.

Rule 4570 provides that, at the time a firm files a Form BDW, the firm must designate a person associated with the member on the Form BDW as the custodian of the firm's books and records. The rule change made minor revisions to the text and the title of the rule to reflect that the associated person is designated as the custodian of the member's "books and records" (rather than "the record") to be consistent with the terminology used in Form BDW.

Rule/Series Number	Rule Title
Rule 4000 Series	FINANCIAL AND OPERATIONAL RULES
Rule 4500 Series	BOOKS, RECORDS AND REPORTS
Rule 4570	Custodian of Books and Records

FINRA Rule Filing SR-FINRA-2009-084

www.finra.org/rulefilings/2009-084

FINRA Rule 5330

The rule change adopts, with several changes, NASD Rule 3220 (Adjustment of Open Orders) as FINRA Rule 5330 (Adjustment of Orders) in the Consolidated FINRA Rulebook.

Rule 5330 sets forth the requirements for a member firm regarding orders held by the firm that involve a security that is subject to a dividend, payment or distribution. The rule establishes different requirements depending upon whether the dividend, payment or distribution is in cash, stock, combined cash and stock, or determined by the stockholder.

In addition to making numerous formatting and technical changes to the rule to conform it more closely to analogous rules of other self-regulatory organizations, the rule change also included several substantive changes. First, the rule change amended the provision regarding the adjustment of an order in the case of a stock dividend or split to require that the order be rounded down to the next lowest share, rather than the next lowest round lot. Second, the rule change clarified the treatment of orders involving securities that are subject to a combined cash and stock dividend/split by specifying that, in these circumstances, firms should calculate the cash portion of the adjustment using the existing formula in subparagraph (1) of the rule and should calculate the stock portion of the adjustment using the existing formula in subparagraph (2) of the rule. Third, the rule change broadened the obligation of firms to cancel orders involving securities subject to a reverse split so that the rule now requires that all such orders be cancelled. Finally, the rule change amended the rule to require that firms notify customers who have pending orders that are not otherwise required to be adjusted under the rule of any stock splits in the security.

Rule/Series Number	Rule Title
Rule 5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
Rule 5300 Series	HANDLING OF CUSTOMER ORDERS
Rule 5330	Adjustments of Orders

FINRA Rule Filing SR-FINRA-2009-086

www.finra.org/rulefilings/2009-086

FINRA Rule 5160

The rule change adopts, without material change, NASD Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) in the Consolidated FINRA Rulebook.

Rule 5160 requires that selling syndicate agreements or selling group agreements: (1) set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and (2) state clearly to whom and under what circumstances concessions, if any, may be allowed. The rule change amended only the title of the rule to clarify the rule's scope.

Rule/Series Number	Rule Title
Rule 5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
Rule 5100 Series	SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION
Rule 5160	Disclosure of Price and Concessions in Selling Agreements