

# Regulatory Notice

11-19

## Books and Records

### SEC Approves Consolidated FINRA Rules Governing Books and Records

Effective Date: December 5, 2011

#### Executive Summary

The SEC approved FINRA's proposal to adopt rules governing books and records<sup>1</sup> for the consolidated FINRA rulebook.<sup>2</sup> The new rules, FINRA Rules 2268, 4511, 4512, 4513, 4514, 4515, 5340 and 7440(a)(4), are based in large part on NASD Rule 3110, NYSE Rule 440 and NYSE Rule Interpretations 410/01 and 410/02.

The text of the new rules is set forth in Attachment A. The rules take effect on December 5, 2011.

Questions regarding this *Notice* should be directed to Afshin Atabaki, Assistant General Counsel, Office of General Counsel, at (202) 728-8902.

#### Background & Discussion

The new rules, which are modeled after NASD Rule 3110, NYSE Rule 440 and NYSE Rule Interpretations 410/01 and 410/02, require member firms to make and preserve certain books and records to show compliance with applicable securities laws, rules and regulations—and to enable FINRA and SEC staffs to conduct effective examinations. In general, the new rules streamline, strengthen and clarify existing requirements, as explained below.<sup>3</sup>

#### General Requirements

FINRA Rule 4511, which is based on the general recordkeeping requirements of NASD Rule 3110(a) and NYSE Rule 440, clarifies that firms are obligated to: (1) make and preserve books and records as required under the rules of FINRA, the Securities Exchange Act (SEA) and the applicable SEA rules;<sup>4</sup> and (2) preserve the books and records required to be made pursuant to the FINRA rules in a format and media that complies with SEA Rule 17a-4.<sup>5</sup>

#### April 2011

##### Notice Type

- ▶ Consolidated FINRA Rulebook
- ▶ Rule Approval

##### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

##### Key Topics

- ▶ Account Name and Designation
- ▶ Books and Records
- ▶ Customer Account Information
- ▶ Customer Complaints
- ▶ Electronic Signature and Approval
- ▶ Investment Adviser Orders
- ▶ Negotiable Instruments
- ▶ Pre-Time Stamping
- ▶ Predispute Arbitration Agreements
- ▶ Recording of Order Information
- ▶ Retention Requirements

##### Referenced Rules & Notices

- ▶ E-Sign Act
- ▶ FINRA Rule 2070
- ▶ FINRA Rules 2268, 4511, 4512, 4513, 4514, 4515, 5340 and 7440
- ▶ FINRA Rule 12904
- ▶ Information Notice 3/12/08
- ▶ Investment Advisers Act
- ▶ NASD Rules 2510 and 3110
- ▶ NYSE Rule 410
- ▶ NYSE Rule Interpretations 410/01 and 410/02
- ▶ NYSE Rule 440
- ▶ Regulatory Notices 09-63 and 11-05
- ▶ SEA Rule 17a-3
- ▶ SEA Rule 17a-4

Additionally, FINRA Rule 4511 requires firms to preserve for a period of at least six years those FINRA books and records for which there is no specified retention period under the FINRA rules or applicable SEA rules.<sup>6</sup> This six-year retention period is a default retention period for those FINRA rules that require firms to preserve certain books and records, but do not specify a retention period, and where there is no retention period specified under the SEA rules. In the absence of contrary guidance in a rule, if the books and records pertain to an account, the retention period is for six years after the date the account is closed; otherwise, the retention period is for six years after such books and records are made.

### Customer Account Information

FINRA Rule 4512 requires firms to maintain certain information relating to customer accounts. The new rule is based on existing requirements in NASD Rule 3110(c), with several changes as described below.

The new rule requires firms to maintain the name of the associated person, if any, responsible for the account, rather than requiring firms to maintain the signature of the registered representative introducing the account.<sup>7</sup> Where a member firm designates multiple individuals as being responsible for an account, the firm is required to maintain each of their names and a record indicating the scope of their responsibilities with respect to the account. For purposes of the rule, it is the member firm's obligation to determine whether a particular individual is responsible for the account based on the scope of the individual's activities with respect to that account.

The new rule continues to require a firm to maintain the signature of a partner, officer or manager of the firm with respect to an account,<sup>8</sup> but it clarifies that the purpose of this signature is to denote that the account has been accepted in accordance with the firm's policies and procedures for acceptance of accounts.<sup>9</sup> The signature also serves to validate the identity of the named associated person, if any. The rule does not require a partner, officer or manager to provide any particular representations. Further, this signature requirement may be satisfied through the use of electronic means. In this regard, FINRA will consider a valid electronic signature to be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), the guidance issued by the SEC relating to the E-Sign Act<sup>10</sup> and the guidance provided by FINRA through its interpretive letters,<sup>11</sup> which address electronic approval processes generally.

With respect to a discretionary account maintained by a member firm, the new rule requires firms to obtain the manual dated signature of each named, natural person authorized to exercise discretion in the account.<sup>12</sup> For retention purposes, firms may choose to maintain and preserve the signature record on electronic storage media consistent with SEA Rule 17a-4(f). The new rule no longer requires firms to record the date discretion was granted,<sup>13</sup> or to record the age or approximate age of the customer in connection with

exempted securities. The new rule also clarifies that: (1) the requirements of the rule do not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by the customer for the purchase or sale of a definite dollar amount or quantity of a specified security; and (2) nothing in the rule shall be construed as allowing member firms to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

For an account that was opened pursuant to a prior FINRA rule, FINRA Rule 4512 requires member firms to update the information for such an account in compliance with the new rule whenever they update the account information in the course of their routine and customary business, or as required by other applicable laws or rules.<sup>14</sup> FINRA believes that to promote greater consistency and uniformity of account record information, it is necessary that firms update the account information in such a manner.

Finally, the new rule includes the following additional provisions:

- ▶ It requires firms to preserve: (1) any customer account information that subsequently is updated for at least six years after that update; and (2) the last update to any customer account information, or the original account information if there are no updates, for at least six years after the account is closed.<sup>15</sup>
- ▶ It reminds firms that they may be subject to additional recordkeeping requirements under the SEA.<sup>16</sup>
- ▶ It also reminds firms of their obligation to comply with the requirements of FINRA Rule 2070 (Transactions Involving FINRA Employees).<sup>17</sup>
- ▶ It provides general explanations of the terms “maintain” and “preserve” for purposes of FINRA Rule 4512 only.<sup>18</sup>

### Records of Written Customer Complaints

Consistent with existing requirements under NASD Rule 3110, FINRA Rule 4513 addresses a member’s obligation to preserve records of written customer complaints at each office of supervisory jurisdiction (OSJ)<sup>19</sup> and defines the term “customer complaint” for purposes of this requirement.<sup>20</sup>

The new rule clarifies that the obligation to keep customer complaint records in each OSJ applies only to complaints that relate to that office, including complaints that relate to activities supervised from that office, and provides that firms may maintain the required records at the OSJ or make them promptly available at such office upon FINRA’s request. Lastly, to take into account FINRA’s four-year routine examination cycle for certain member firms, FINRA Rule 4513 requires that firms preserve the customer complaint records for a period of at least four years.<sup>21</sup>

### Authorization Records for Negotiable Instruments

FINRA Rule 4514 provides, similar to NASD Rule 3110(g), that member firms or associated persons must get a customer's express written authorization before obtaining from a customer, or submitting for payment, a negotiable instrument drawn on the customer's checking, savings, share or similar account. As is the case today, the new rule requires that firms preserve the written authorization and provides that the customer's signature on the negotiable instrument would satisfy the authorization requirement, in which case the member firm is not required to preserve that negotiable instrument.

However, FINRA Rule 4514 clarifies that where the required authorization is separate from the negotiable instrument, firms must preserve that required authorization. The new rule further clarifies that the applicable retention period is three years *following the date such authorization expires* since a customer authorization may remain in effect beyond three years from the date of the request.<sup>22</sup>

### Changes in Account Name or Designation

FINRA Rule 4515, which is modeled after NASD Rule 3110(j) and NYSE Rule 410, requires that, before a customer order is executed, the account name or designation must be placed upon the order form or other similar record for the transaction,<sup>23</sup> and it addresses the approval and documentation procedures for changes in such account name or designation. FINRA Rule 4515 clarifies that with respect to any change in account name or designation that takes place prior to execution of the trade, the essential facts the principal relied on in approving such change must be documented in writing *prior to execution*. Firms may use electronic means to satisfy the approval and documentation requirements of FINRA Rule 4515, consistent with the guidance above regarding the use of electronic means to denote acceptance of accounts under FINRA Rule 4512.

Additionally, FINRA Rule 4515.01, which is generally based on NYSE Rule Interpretation 410/02, provides that when accepting orders from investment advisers, the member firm may allow such investment advisers to make allocations on their orders for customers on whose behalf the investment advisers submit the orders, as long as the firm receives specific account designations or customer names from such investment advisers by noon of the *next business day following* the trading session.<sup>24</sup> FINRA Rule 4515.01 is not limited to block orders, but it only applies where there is more than one customer for any particular order. Moreover, the provision extends to investment advisers that are registered under the Investment Advisers Act or that, but for Investment Advisers Act Section 203(b) or 203A, would be required to register under the Investment Advisers Act.<sup>25</sup> The provision does not extend to accounts handled by individual registered representatives of firms who otherwise exercise discretionary authority over accounts pursuant to NASD Rule 2510.

Lastly, FINRA Rule 4515.01 clarifies that member firms may not knowingly facilitate the allocation of orders from investment advisers in a manner other than in compliance with both (i) the investment adviser's intent at the time of trade execution to allocate shares on a percentage basis to the participating accounts and (ii) the investment adviser's fiduciary duty with respect to allocations for such participating accounts, including but not limited to allocations based on the performance of a transaction between the time of execution and the time of allocation. The "knowingly facilitate" standard means that a broker-dealer may not act recklessly or with knowledge in facilitating an investment adviser's breach of its fiduciary duty to its clients, and compliance with that standard turns on the facts and circumstances.

### **Predispute Arbitration Agreements**

FINRA Rule 2268 requires, among other things, that predispute arbitration agreements contain certain highlighted disclosures so that customers are advised about what they are agreeing to when they sign them. The new rule continues the requirements of NASD Rule 3110(f) and updates the disclosure language to reflect amendments to FINRA Rule 12904, which requires arbitrators to provide an explained decision to the parties in eligible cases<sup>26</sup> if there is a joint request by all parties at least 20 days before the first scheduled hearing date.<sup>27</sup> The disclosure provision regarding explained decisions will apply prospectively to predispute arbitration agreements entered into on or after December 5, 2011, the effective date of FINRA Rule 2268.<sup>28</sup>

### **Order Audit Trail System (OATS) Recordkeeping Requirements**

FINRA Rule 7440(a)(4) sets forth the OATS recordkeeping requirements for member firms that are "Reporting Members," as defined in the OATS rules, for orders received or executed at their trading departments. The new rule is modeled after NASD Rule 3110(h).

### **Pre-Time Stamping**

FINRA Rule 5340 states that pre-time stamping of order tickets in connection with block positioning is contrary to FINRA Rule 4511. This requirement is based on a similar requirement in NYSE Rule Interpretation 410/01.

- 1 See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving Proposed Rule Change; File No. SR-FINRA-2010-052) (Approval Order).
- 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 FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see [Information Notice 3/12/08](#) (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.
- 3 This *Notice* highlights the most significant changes. For a detailed description of all the changes, firms should review the [Approval Order](#).
- 4 See FINRA Rule 4511(a). In contrast, the general recordkeeping obligation in NASD Rule 3110(a) extends to all applicable laws, rules and regulations.
- 5 See FINRA Rule 4511(c).
- 6 See FINRA Rule 4511(b).
- 7 See FINRA Rule 4512(a)(1)(C). Member firms would continue to be subject to any additional requirements imposed by SEA Rule 17a-3. For example, SEA Rule 17a-3(a)(17) requires that for each account with a natural person, the account record must indicate whether it has been signed by the associated person (if any) responsible for the account. However, this requirement only applies to accounts for which the member is, or within the past 36 months has been, required to make a suitability determination under the federal securities laws or the requirements of a self-regulatory organization of which it is a member.
- 8 See FINRA Rule 4512(a)(1)(D).
- 9 NASD Rule 3110(c) simply provides that firms are required to maintain the signature of the partner, officer, or manager “who accepts the account.”
- 10 See Securities Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001) (Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)).
- 11 See, e.g., [Letter to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, from Nancy Libin, NASD, dated July 5, 2001](#).

- 12 See FINRA Rule 4512(a)(3). NASD Rule 3110(c) requires firms to obtain the signature of each person authorized to exercise discretion in the account. FINRA will address the requirements applicable to other types of accounts in which a person is authorized by a customer to act on the customer's behalf in the context of the proposed changes to NASD Rule 2510 (Discretionary Accounts). See [Regulatory Notice 09-63](#) (November 2009) (Proposed Consolidated FINRA Rule Governing Discretionary Accounts and Transactions).
- 13 Pursuant to NASD Rule 2510, firms would still be required to obtain the customer's prior written authorization. As part of the proposed changes to NASD Rule 2510, FINRA is proposing to require firms to obtain the customer's "dated" prior written authorization. See [Regulatory Notice 09-63](#).
- 14 See FINRA Rule 4512(b).
- 15 See FINRA Rule 4512.01.
- 16 See FINRA Rule 4512.02.
- 17 See FINRA Rule 4512.03. FINRA Rule 2070 plays a vital role in helping FINRA monitor whether employees are abiding by trading restrictions imposed by the FINRA Code of Conduct.
- 18 See FINRA Rule 4512.04.
- 19 See FINRA Rule 4513(a).
- 20 See FINRA Rule 4513(b).
- 21 Currently, firms are required to preserve these records for a period of at least three years. See SEA Rules 17a-3(a)(18) and 17a-4(b)(4).
- 22 NASD Rule 3110(g) requires firms to preserve the required written authorization (other than a copy of a negotiable instrument signed by the customer) for a period of three years.
- 23 See also SEA Rule 17a-3(a)(6).
- 24 NYSE Rule Interpretation 410/02 only applies to block orders and requires members to obtain the required information by the end of the business day.
- 25 NYSE Rule Interpretation 410/02 only applies to investment advisers that are either registered under the Investment Advisers Act or subject to state regulation pursuant to Section 203A of the Investment Advisers Act.
- 26 Pursuant to FINRA Rule 12904(g)(6), the requirement does not apply to simplified cases decided without a hearing under FINRA Rule 12800 or to default cases conducted under FINRA Rule 12801.
- 27 See FINRA Rule 2268(a)(4).
- 28 FINRA is considering additional changes to FINRA Rule 2268 to reflect amendments to the Code of Arbitration Procedure for Customer Disputes allowing customers to choose an all public arbitration panel. See [Regulatory Notice 11-05](#) (February 2011) (Customer Option to Choose an All Public Arbitration Panel in All Cases).

## ATTACHMENT A

Below is the text of the new FINRA rules.

\* \* \* \* \*

### **2268. Requirements When Using Predispute Arbitration Agreements for Customer Accounts**

(a) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form.

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(1) All parties to this agreement are giving up the right to sue each other 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) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

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

(4) 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.

(5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(6) 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.

(7) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(b)(1) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.



(2) Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(c)(1) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to paragraph (b)(2) above, the member must provide a copy to the customer by the earlier date required by this paragraph (c)(1) or by paragraph (b)(2).

(2) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(d) No predispute arbitration agreement shall include any condition that:

- (1) limits or contradicts the rules of any self-regulatory organization;
- (2) limits the ability of a party to file any claim in arbitration;
- (3) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;
- (4) limits the ability of arbitrators to make any award.

(e) If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.

(f) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(g) The provisions of this Rule shall become effective on May 1, 2005. The provisions of paragraph (c) shall apply to all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before May 1, 2005 are subject to the provisions of this Rule in effect at the time the agreement was signed.

\* \* \* \* \*

#### **4510. Books and Records Requirements**

##### **4511. General Requirements**

(a) Members shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.

(b) Members shall preserve for a period of at least six years those FINRA books and records for which there is no specified period under the FINRA rules or applicable Exchange Act rules.

(c) All books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with SEA Rule 17a-4.

##### **4512. Customer Account Information**

(a) Each member shall maintain the following information:

(1) for each account:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) name(s) of the associated person(s), if any, responsible for the account and if multiple individuals are assigned responsibility for the account, a record indicating the scope of their responsibilities with respect to the account;

(D) signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts; and

(E) if the customer is a corporation, partnership or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

- (A) customer's tax identification or Social Security number;
- (B) occupation of customer and name and address of employer; and
- (C) whether customer is an associated person of another member; and

(3) for discretionary accounts, in addition to compliance with subparagraph (1) and, to the extent applicable, subparagraph (2) above, and NASD Rule 2510(b), the member shall maintain a record of the dated, manual signature of each named, natural person authorized to exercise discretion in the account. This recordkeeping requirement shall not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite dollar amount or quantity of a specified security. Nothing in this Rule shall be construed as allowing members to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

(b) A member need not meet the requirements of this Rule with respect to any account that was opened pursuant to a prior FINRA rule until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

(c) For purposes of this Rule, the term "institutional account" shall mean the account of:

- (1) a bank, savings and loan association, insurance company or registered investment company;
- (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or
- (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.

• • • [Supplementary Material](#): -----

**.01 Customer Account Information Retention Periods.** For purposes of this Rule, members shall preserve a record of any customer account information that subsequently is updated for at least six years after the date that such information is updated. Members shall preserve a record of the last update to any customer account information, or the original account information if there are no updates to the account information, for at least six years after the date the account is closed.

**.02 Additional Customer Account Records Under the Exchange Act.** Members should be aware that they may be required to make and preserve additional customer account records as required under Section 17(a) of the Exchange Act and the applicable associated Exchange Act rules.

**.03 Compliance With Rule 2070.** With respect to paragraph (a)(2)(B) of this Rule, members should be aware that they have an obligation to comply with the requirements of Rule 2070(a) if they have actual notice that a customer having a financial interest in, or controlling trading in, an account is an employee of FINRA.

**.04 “Maintain” and “Preserve.”** For purposes of Rule 4512 only, as a general matter, the term “maintain” is used to reflect customer account information that is current or in use. The term “preserve” is used to reflect customer account information that is no longer current or in use.

#### **4513. Records of Written Customer Complaints**

(a) Each member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints. Rather than keep and preserve the customer complaint records required under this Rule at the office of supervisory jurisdiction, the member may choose to make them promptly available at that office, upon request of FINRA. Customer complaint records shall be preserved for a period of at least four years.

(b) For purposes of this Rule, “customer complaint” means any grievance by a customer or any person authorized to act on behalf of the customer involving the activities of the member or a person associated with the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

**4514. Authorization Records for Negotiable Instruments Drawn From a Customer's Account**

No member or person associated with a member shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Where the written authorization is separate from the negotiable instrument, the member shall preserve the authorization for a period of three years following the date the authorization expires. This provision shall not, however, require members to preserve copies of negotiable instruments signed by customers.

**4515. Approval and Documentation of Changes in Account Name or Designation**

Before any customer order is executed, there must be placed upon the order form or other similar record of the member for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a qualified and registered principal designated by the member. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for the period of time and accessibility specified in SEA Rule 17a-4(b). With respect to any change that takes place prior to execution of the trade, the required approval and documentation must take place prior to execution.

• • • [Supplementary Material](#): -----

**.01 Allocations of Orders Made by Investment Advisers.** Members may accept orders from investment advisers as described below and allow such investment advisers to make allocations on their orders for customers on whose behalf the investment advisers submit the orders, provided that members receive specific account designations or customer names from such investment advisers by noon of the next business day following the trading session. This exception only applies where there is more than one customer for any particular order.

In addition, this exception applies to: (a) outside investment advisers; and (b) associated persons of a member who provide investment advisory services on behalf of a member acting as an investment adviser. However, in either instance, the investment adviser must be one who is registered under the Investment Advisers Act or who, but for Investment Advisers Act Section 203(b) or 203A, would be required to register under the Investment Advisers Act. It does not apply to accounts handled by individual registered representatives of members who otherwise exercise discretionary authority over accounts pursuant to NASD Rule 2510. Nothing in this Rule or Supplementary Material may be construed as allowing a member knowingly to facilitate the allocation of orders from investment advisers in a manner other than in compliance with both (i) the investment adviser's intent at the time of trade execution to allocate shares on a percentage basis to the participating accounts and (ii) the investment adviser's fiduciary duty with respect to allocations for such participating accounts, including but not limited to allocations based on the performance of a transaction between the time of execution and the time of allocation.

\* \* \* \* \*

#### **5340. Pre-Time Stamping**

Pre-time stamping of order tickets in connection with block positioning is contrary to Rule 4511.

\* \* \* \* \*

#### **7440. Recording of Order Information**

##### **(a) Procedures**

(1) through (3) No Change.

(4) With respect to each order that is received or executed at its trading department, each Reporting Member shall record an identification of:

(A) each registered person who receives the order directly from a customer;

(B) each registered person who executes the order; and

(C) the department that originated the order if the order is originated by the member and transmitted manually to another department.

(5) Maintaining and Preserving Records

(A) through (B) No Change.

(b) through (d) No Change.

\* \* \* \* \*