

Regulatory Notice

11-46

Annual Audit Reports

FINRA to Require Electronic Submission of Annual Audit Reports

Effective Date: November 8, 2011, for all annual audit reports with a fiscal year end on or after September 30, 2011

Executive Summary

FINRA is revising the process by which member firms submit to FINRA the annual audited financial statements required pursuant to Securities Exchange Act (SEA) Rule 17a-5(d) (annual audit reports). Specifically, pursuant to NASD Rule 3170, FINRA is requiring, effective November 8, 2011, that firms submit their annual audit report in electronic form.¹ This requirement is applicable to annual audit reports with a fiscal year end on or after September 30, 2011.

This *Notice* discusses the electronic submission process, which will replace the current submission of annual audit reports in hard copy form to FINRA. Once FINRA has completed the transition to electronic submission of annual audit reports, as described in this *Notice*, FINRA will no longer accept annual audit reports filed in hard copy form.

Questions concerning this *Notice* may be directed to your firm's Regulatory Coordinator.

Background & Discussion

SEA Rule 17a-5(d) requires, among other things, that every broker or dealer registered pursuant to SEA Section 15 must file an annual audit report at the principal office of the firm's Designated Examining Authority (DEA).² Pursuant to NASD Rule 3170, FINRA will, effective November 8, 2011, require member firms for which it is the DEA to submit annual audit reports in electronic form.³ Accordingly, annual audit reports for any fiscal year ending on or after September 30, 2011, must be submitted electronically.

October 2011

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Regulatory Reporting
- Senior Management

Key Topics

- Annual Audit Report

Referenced Rules & Notices

- NASD Rule 3170
- SEA Rule 17a-4
- SEA Rule 17a-5
- Regulatory Notice 08-11
- Notice to Members 06-61



Financial Industry Regulatory Authority

Firms are required to submit their annual audit report in electronic form via FINRA's Firm Gateway. The required format of the filing is Portable Document Format (PDF). The electronic submission screen on the Firm Gateway will include a list of documents that, if applicable, are required in the audit filing. This list will assist the firm in ensuring that all required schedules are included in its submission. Firms should refer to SEA Rule 17a-5 for information regarding broker-dealer annual audit report requirements.

In addition to the annual audit report, SEA Rule 17a-5 requires that an oath and affirmation page be completed. Specifically, SEA Rule 17a-5(e)(2) states that there must be attached to the annual audit report an oath or affirmation that, to the best knowledge and belief of the person making such an oath or affirmation, (i) the financial statements and schedules are true and correct and (ii) neither the broker or dealer, nor any partner, officer, or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The rule requires that the oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer. Firms must submit the oath and affirmation electronically with their annual audit, *and* must also maintain the oath and affirmation page with an original manual signature (including raised notary seal, where applicable) as part of their books and records under SEA Rule 17a-4(a), along with the accompanying annual audit report in hard copy form.

In the new annual audit electronic filing platform in Firm Gateway, if a firm wishes (or is required by FINRA)⁴ to submit an amended annual audit report, when the original audit report was submitted to FINRA electronically, the firm's assigned Regulatory Coordinator will open a "re-file" window in Firm Gateway to permit the firm to submit the amended filing. If a firm needs to amend an annual audit report that was previously filed in hard copy form, the amendment must also be submitted in hard copy form. In all cases, amended audit reports must be submitted in their entirety (*i.e.*, an amended filing must include all schedules and information required pursuant to SEA Rule 17a-5, including the oath and affirmation, whether or not such schedules and information have been amended). FINRA will retain the original audit report filed, as well as all amended filings. Consistent with FINRA's current practice for hard copy filings, FINRA will treat electronically filed annual audit reports as confidential.⁵

Firms must use their current FINRA entitlement user ID and password to access the Firm Gateway and submit their annual audit report. Firm personnel should contact their firm's Super Account Administrator (SAA) with any questions regarding how to access Firm Gateway. For Firm Gateway technical questions, contact FINRA's Technical Support Group at (301) 869-6699.

Endnotes

1. NASD Rule 3170 gives FINRA authority to require firms to file or submit electronically any regulatory notice or other document that a member firm is required to file with or otherwise submit to FINRA. In an earlier *Notice*, FINRA listed 10 additional financial notifications (and 11 related SEC Rules) to which NASD Rule 3170 applies. See [Regulatory Notice 08-11](#) (March 2008) (Electronic Filing) and [Notice to Members 06-61](#) (November 2006) (Electronic Filing Requirements).
2. Specifically, Rule 17a-5(d)(6) provides that one copy of the annual audit report must be filed at the regional office of the SEC for the region in which the broker or dealer has its principal place of business and at the principal office of the DEA for said broker or dealer. Two copies must be filed at the SEC's principal office in Washington, DC. Further, copies must be provided to all self-regulatory organizations of which the broker or dealer is a member.
3. Firms must continue to file annual audit reports in hard copy form with the SEC.
4. FINRA may require a firm to submit an amended annual audit report to cure inadequacies contained in the original submission. Pursuant to Section 4(g) of Schedule A to FINRA's By-Laws, an annual audit report that contains material inaccuracies or is filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.
5. Notwithstanding that FINRA will treat the electronically filed annual audit reports as confidential, as commonly understood, FINRA may release such filings pursuant to government or compulsory legal process. In addition, FINRA understands that the SEC will continue to make all statements filed pursuant to SEA Rule 17a-5(d) available to the public, subject to specified exceptions. See SEA Rule 17a-5(e)(3).