

Consolidated FINRA Rulebook

SEC Approves Amendments to FINRA Rule 0160 (Definitions) and the Repeal of Incorporated NYSE Rule 2A (Jurisdiction)

Effective Date: February 21, 2012

Executive Summary

The SEC approved amendments to FINRA Rule 0160 (Definitions)¹ and the repeal of Incorporated NYSE Rule 2A (Jurisdiction) from the FINRA rulebook.² The amendments take effect on February 21, 2012. The text of FINRA Rule 0160, as amended, is set forth in Attachment A.

Questions regarding this *Notice* should be directed to:

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Background & Discussion

FINRA Rule 0160 (Definitions)

FINRA Rule 0160 provides that a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning. NASD Rule 0120 (Definitions) sets forth additional defined terms that apply generally throughout the rules unless the context otherwise requires. Certain rules throughout the FINRA rulebook include defined terms that apply specifically for the purposes of a particular rule.³

On October 20, 2011, the SEC approved amendments to FINRA Rule 0160.⁴ The amendments transfer certain defined terms from NASD Rule 0120, subject to certain changes, to FINRA Rule 0160 in the Consolidated FINRA Rulebook, and add new defined terms to FINRA Rule 0160 to reflect the conventions of the Consolidated FINRA Rulebook. In addition, the amendments eliminate as unnecessary or duplicative certain defined terms in NASD Rule 0120. In light of these changes, as of February 21, 2012, NASD Rule 0120 will be eliminated from the current FINRA rulebook.⁵

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Notice Type

- ▶ Consolidated Rulebook
- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Definitions
- ▶ Jurisdiction
- ▶ Rulebook Consolidation

Referenced Rules & Notices

- ▶ FINRA By-Laws
- ▶ FINRA Rule 0160
- ▶ NASD Rule 0120
- ▶ NYSE Rule 2A

Defined Terms Transferring Without Substantive Change to FINRA Rule 0160

The amendments transfer the terms “Code of Procedure,” “customer,” “member,” “person,” “selling group,” and “selling syndicate” from NASD Rule 0120 to FINRA Rule 0160 without substantive change.⁶ These defined terms are achieving their intended purpose and are appropriate in their application to the consolidated FINRA rules. The amendments make non-substantive changes to these defined terms, where needed, to reflect FINRA’s corporate name.

Defined Terms Added to FINRA Rule 0160

The amendments to FINRA Rule 0160 add definitions for the terms “FINRA,” “Investment Advisers Act,” “Investment Company Act,” “Securities Act,” and “State”⁷ because the terms are used throughout the Consolidated FINRA Rulebook.

Defined Terms Transferring With Minor Changes to FINRA Rule 0160

The amendments transfer the terms “Act,” “By-Laws,” and “Commission” from NASD Rule 0120 to FINRA Rule 0160 with minor changes to reflect the conventions of the Consolidated FINRA Rulebook.

The term “completion of the transaction” currently is defined in NASD Rule 0120(f)(1) through (f)(4). The amendments transfer NASD Rule 0120(f)(1) unchanged to FINRA Rule 0160(b)(3)(A) to provide that in the case of a customer who purchases a security through or from a member firm, except as provided in subparagraph (B), the transaction is complete at the time when the customer pays the firm any part of the purchase price, or, if payment is effected by a bookkeeping entry, at the time when the bookkeeping entry is made by the member firm for any part of the purchase price.

The amendments make minor changes to NASD Rule 0120(f)(2) and (f)(3) to clarify these provisions. NASD Rule 0120(f)(2) is amended in FINRA Rule 0160(b)(3)(B) to provide that in the case of a customer who purchases a security through or from a member firm and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the transaction is complete at the time when the firm delivers, *or credits the delivery of*, the security to or into the account of the customer. NASD Rule 0120(f)(3) is amended in FINRA Rule 0160(b)(3)(C) to provide that in the case of a customer who sells a security through or to a member firm, except as provided in subparagraph (D), if any security is not in the custody of the firm at the time of sale, the transaction is complete at the time when the security is delivered to the firm, and if the security is in the custody of the firm at the time of the sale, the transaction is complete *the earlier of* when the firm transfers the security from the account of the customer *or the closing date of the*

transaction. The amendments transfer NASD Rule 0120(f)(4) unchanged to FINRA Rule 0160(b)(3)(D) to provide that in the case of a customer who sells a security through or to a member firm and who delivers the security to the member prior to the time when delivery is requested or notification is given that delivery is due, the transaction is complete at the time when the firm makes payment to or into the account of the customer.

Defined Terms Not Transferring to FINRA Rule 0160

Certain defined terms in NASD Rule 0120 are not transferring to the Consolidated FINRA Rulebook; however, this change does not eliminate any substantive FINRA requirements.⁸

The amendments delete as unnecessary from the list of defined terms the term “NASD” due to the change in NASD’s corporate name to FINRA. Also, the term “Association” is being deleted because it is not used in the consolidated FINRA rules.

The term “Nasdaq” currently is defined in NASD Rule 0120(k). This term was appropriate for inclusion in the FINRA rulebook when Nasdaq was an affiliate of FINRA. Since FINRA is no longer affiliated with Nasdaq, the amendments delete this term from the list of defined terms.

The amendments delete as duplicative from the list of defined terms the term “NASD Regulation” because it is defined in Article I (II) of the FINRA By-Laws.⁹ The definition in the By-Laws reflects the change in NASD’s corporate name to FINRA with the language “or any future name of this entity.” Also, the amendments delete the term “National Adjudicatory Council” (NAC) as duplicative because it is defined in Article I (nn) of the FINRA By-Laws. Lastly, the amendments delete the terms “Rules” or “Rules of the Association” because Article I (vv) of the FINRA By-Laws includes an identical definition for the terms “Rules of the Corporation” or “Rules.”

Incorporated NYSE Rule 2A (Jurisdiction)

Incorporated NYSE Rule 2A generally addresses jurisdictional authority with respect to, among other things, rulemaking, examinations, disciplinary actions and listing applications.¹⁰ On December 13, 2011, the SEC approved the repeal of Incorporated NYSE Rule 2A from the FINRA rulebook, since its transfer to the Consolidated FINRA Rulebook is unnecessary.¹¹ The FINRA By-Laws, as approved by the membership and the SEC in 2007, address the powers and authority of the FINRA Board of Governors and, together with the Exchange Act, set forth FINRA’s authority and responsibilities as a registered securities association.

Endnotes

1. See Securities Exchange Act Release No. 65599 (October 20, 2011), 76 FR 66344 (October 26, 2011) (Order Approving File No. SR-FINRA-2011-043).
2. See Securities Exchange Act Release No. 65944 (December 13, 2011), 76 FR 78706 (December 19, 2011) (Order Approving File No. SR-FINRA-2011-062).
3. 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 members, 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 members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice, March 12, 2008* (Rulebook Consolidation Process). FINRA will address the definitions set forth in Incorporated NYSE Rules 1 (“The Exchange”), 2 (“Member,” “Membership,” “Member Firm,” etc.), 3 (“Security”), 4 (“Stock”), 5 (“Bond”), 6 (“Floor”), 8 (“Delivery”), 9 (“Branch Office Manager”), 10 (“Registered Representative”), 11 (Effect of Definitions), and 12 (“Business Day”) as part of a separate phase of the rulebook consolidation process.
4. See *supra* note 1.
5. Notwithstanding the transfer of certain defined terms from NASD Rule 0120 to FINRA Rule 0160 in the Consolidated FINRA Rulebook, the defined terms in FINRA Rule 0160 will continue to apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook, as applicable. See also Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File No. SR-FINRA-2008-021), discussing “Rules of General Applicability.”
6. The amendments reorganize FINRA Rule 0160 so that the defined terms are arranged alphabetically.
7. The definition of “State” mirrors the definition for the term “State” in Section 3(a)(16) of the Securities Exchange Act of 1934 (Exchange Act), as well as in Incorporated NYSE Rule 2(g).
8. Notwithstanding the elimination of these defined terms from the FINRA rulebook, the terms continue to have the meaning stated in NASD Rule 0120 for purposes of the remaining NASD rules.
9. As noted above, pursuant to FINRA Rule 0160, a term defined in the FINRA By-Laws shall have the meaning provided in the By-Laws when used in the rules, unless the term is defined differently in a rule, or unless the context of the term within a rule requires a different meaning.
10. NYSE Rule 2A was adopted in 2006 as part of the merger between the New York Stock Exchange LLC (NYSE) and Archipelago Holdings, Inc. since the NYSE Constitution, which contained provisions detailing the NYSE’s jurisdiction, was eliminated in the merger. See Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (Order Approving File No. SR-NYSE-2005-77).
11. See *supra* note 2.

Attachment A

Below is the text of FINRA Rule 0160, as amended. NASD Rule 0120 (Definitions) and Incorporated NYSE Rule 2A (Jurisdiction) will be deleted in their entirety from the Transitional Rulebook.

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0100. GENERAL STANDARDS

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0160. Definitions

(a) The terms used in the Rules, if defined in the FINRA By-Laws, shall have the meaning as defined in the FINRA By-Laws, unless a term is defined differently in a Rule, or unless the context of the term within a Rule requires a different meaning.

(b) When used in the Rules, unless the context otherwise requires:

(1) “By-Laws”

The term “By-Laws” means the By-Laws of the Corporation or the FINRA By-Laws.

(2) “Code of Procedure”

The term “Code of Procedure” means the procedural rules contained in the Rule 9000 Series.

(3) “Completion of the Transaction”

The term “completion of the transaction” means:

(A) In the case of a customer who purchases a security through or from a member, except as provided in subparagraph (B), the time when such customer pays the member any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the member for any part of the purchase price;

(B) In the case of a customer who purchases a security through or from a member and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such member delivers, or credits such delivery of, the security to or into the account of such customer;

(C) In the case of a customer who sells a security through or to a member, except as provided in subparagraph (D), if any security is not in the custody of the member at the time of sale, the time when the security is delivered to the member, and if the security is in the custody of the member at the time of sale, the earlier of when the member transfers the security from the account of such customer or the closing date of the transaction;

(D) In the case of a customer who sells a security through or to a member and who delivers such security to such member prior to the time when delivery is requested or notification is given that delivery is due, the time when such member makes payment to or into the account of such customer.

(4) “Customer”

The term “customer” shall not include a broker or dealer.

(5) “Exchange Act” or “SEA”

The term “Exchange Act” or “SEA” means the Securities Exchange Act of 1934, as amended.

(6) “FINRA”

The term “FINRA” means, collectively, FINRA, Inc., FINRA Regulation, Inc. and FINRA Dispute Resolution, Inc.

(7) “Investment Advisers Act”

The term “Investment Advisers Act” means the Investment Advisers Act of 1940, as amended.

(8) “Investment Company Act”

The term “Investment Company Act” means the Investment Company Act of 1940, as amended.

(9) “Member”

The term “member” means any individual, partnership, corporation or other legal entity admitted to membership in FINRA under the provisions of Articles III and IV of the FINRA By-Laws.

(10) “Person”

The term “person” shall include any natural person, partnership, corporation, association, or other legal entity.

(11) “SEC”

The term “SEC” means the Securities and Exchange Commission.

(12) “Securities Act”

The term “Securities Act” means the Securities Act of 1933, as amended.

(13) “Selling Group”

The term “selling group” means any group formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through members of such selling group, under an agreement which imposes no financial commitment on the members of such group to purchase any such securities except as they may elect to do so.

(14) “Selling Syndicate”

The term “selling syndicate” means any syndicate formed in connection with a public offering, to distribute all or part of an issue of securities by sales made directly to the public by or through participants in such syndicate under an agreement which imposes a financial commitment upon participants in such syndicate to purchase any such securities.

(15) “State”

The term “State” shall mean any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

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