

## Customer Account Statements

### FINRA Requests Comment on a Revised Proposal to Adopt Consolidated FINRA Rule 2231 (Customer Account Statements)

Comment Period Expires: October 31, 2014

#### Executive Summary

FINRA seeks comment on a revised proposal to transfer, largely unchanged, current NASD Rule 2340 (Customer Account Statements) and Incorporated NYSE Rule 409 (Statements of Accounts of Customers)<sup>1</sup> into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements). The revised proposal includes changes made in response to comments on the prior proposal that was subsequently withdrawn. The key changes in the revised proposal from the prior proposal are to (1) maintain the quarterly delivery requirement in the current rule; and (2) allow customers to direct the transmission of customer account statements and other documents to third parties, provided the firm sends duplicates of such account statements and other documents directly to the customer.

The proposed rule is available as Attachment A at [www.finra.org/notices/14-35](http://www.finra.org/notices/14-35).

Questions regarding this *Notice* should be directed to:

- ▶ Kris Dailey, Vice President, Risk Oversight & Operational Regulation (ROOR), at (646) 315-8434; or
- ▶ Kosha Dalal, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-6903.

#### September 2014

##### Notice Type

- ▶ Request for Comment
- ▶ Consolidated Rulebook

##### Suggested Routing

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

##### Key Topics

- ▶ Customer Account Statements

##### Referenced Rules & Notices

- ▶ FINRA Rule 3150
- ▶ FINRA Rule 4311
- ▶ NASD Rule 2340
- ▶ NASD Rule 3050
- ▶ NYSE Rule 409 and its Interpretations
- ▶ NYSE Rule 407
- ▶ SEA Rule 10b-10

## Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by October 31, 2014.

Member firms and other interested parties can submit their comments using the following methods:

- ▶ Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- ▶ Mailing comments in hard copy to:

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

To help FINRA process comments more efficiently, persons should use only one method to comment on the proposal.

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.<sup>2</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).<sup>3</sup>

## Background & Discussion

Current NASD Rule 2340 (Customer Account Statements) generally requires each general securities member (as that term is defined in the rule)<sup>4</sup> and NYSE Rule 409 (Statements of Account of Customers) generally requires each member organization to send account statements to customers at least quarterly showing security and money positions during the preceding quarter.

## A. Initial Filing

In April 2009, FINRA filed with the SEC a proposed rule change to adopt consolidated FINRA Rule 2231 (Customer Account Statements) that would have transferred NASD Rule 2340 and NYSE Rule 409 with significant changes into the FINRA Rulebook (the initial filing).<sup>5</sup> Among other changes, in the initial filing, FINRA proposed to replace the existing quarterly customer account statement delivery requirement with a requirement to send account statements at least once every calendar month to each customer whose account had activity during the period. The initial filing also proposed to incorporate existing supplementary material to NYSE Rule 409, including provisions allowing a firm to send customer account statements and other documents to third parties based on written instructions from the customer.

The SEC received 12 comment letters.<sup>6</sup> All commenters objected to the proposed monthly delivery requirement, generally stating that current industry practice continued to be providing customer account statements on a quarterly basis. Among other concerns, the commenters noted that the proposed monthly delivery requirement would result in significant compliance costs for the industry without meaningful benefits for customers, and could create conflicts with firms' obligations under SEA Rule 10b-10 (Confirmation of Transactions), as well as quarterly reporting standards in the retirement plan industry. SEC staff also expressed concern regarding the proposed provision allowing firms to transmit customer account statements and other documents to third parties based on written instructions from the customer.

In response to the comments, FINRA filed Amendment No. 1 to the proposed rule change in July 2011.<sup>7</sup> Among other changes, in Amendment No. 1, FINRA proposed to permit firms to send quarterly account statements in a range of circumstances.<sup>8</sup> FINRA also revised the proposal regarding transmission of customer account statements to third parties to require firms to continue to deliver duplicate copies of customer account statements to customers even when directed by customers in writing to send the statements to third parties.

The SEC published Amendment No. 1 for comment in August 2011 and received eight comment letters.<sup>9</sup> Commenters continued to raise concerns regarding the monthly delivery requirement, asserting that quarterly delivery of account statements should not be limited to select circumstances. In addition, commenters objected to the proposed requirement to deliver duplicate copies of account statements to customers even when directed by customers in writing to send the statements to third parties. Some commenters believed that there should be circumstances under which members should not be required to deliver duplicate statements to customers, particularly where there is a power of attorney or incapacity. In July 2012, FINRA withdrew the initial filing to further consider the comments.<sup>10</sup>

## B. Revised Proposal

In light of the concerns with the initial filing, FINRA requests comment on a revised proposal that would largely transfer unchanged current NASD Rule 2340 (Customer Account Statements) and NYSE Rule 409 (Statements of Accounts of Customers) into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements).<sup>11</sup> The revised proposal would require each general securities member firm to send account statements at least once each calendar quarter to each customer whose account had activity during the period since the last statement was sent to the customer. The key changes in the revised proposal from the initial filing are to (1) maintain the quarterly delivery requirement in the current rule; and (2) allow customers to direct the transmission of customer account statements and other documents to third parties, provided the firm sends duplicates of such account statements and other documents directly to the customer.

### 1. Provisions Transferring Largely Unchanged

Proposed FINRA Rule 2231 would transfer, largely unchanged, the following requirements of NASD Rule 2340 and NYSE Rule 409:

- ▶ **Quarterly Delivery Requirement.** Proposed FINRA Rule 2231(a) would require each general securities member firm to send account statements to customers at least once each calendar quarter containing a description of any securities position, money balances or account activity in the accounts since the prior account statements were sent. The term “general securities member,” would be transferred with minor technical changes from NASD Rule 2340(d).<sup>12</sup>
- ▶ **Requirement to Provide SIPA Disclosure.** Proposed FINRA Rule 2231(a) also would require customer account statements to include a statement advising customers to report promptly any inaccuracy or discrepancy in their account and to re-confirm any oral communications in writing to further protect the customer’s rights under the Securities Investor Protection Act (SIPA).
- ▶ **Disclosure of Free Credit Balances.** Proposed FINRA Rule 2231(a) also would provide that the rule does not qualify or condition the obligations of firms to comply with SEA Rule 15c3-3(j)(1) related to free credit balances carried for the account of customers.
- ▶ **DVP/RVP Requirements.** Proposed FINRA Rule 2231(b) would provide that quarterly statements do not need to be sent to customer accounts carried solely for execution on a Delivery versus Payment/Receive versus Payment (DVP/RVP) basis, subject to specified conditions.

- ▶ **DPP/REIT Securities Requirements, Subject Pending Rule Filing.** Proposed FINRA Rule 2231(c) would address the inclusion of per share estimated values for DPP or REIT securities held in customer accounts or included on customer account statements, subject to a currently pending rule filing relating to the valuation of unlisted DPP and REIT securities.<sup>13</sup>
  - ▶ **Definitions.** Proposed FINRA Rule 2231(d) would include the current definitions of “general securities member” and “account activity,” among others.
  - ▶ **Exemptive Authority.** Proposed FINRA Rule 2231(e) would allow FINRA to exempt firms from the provisions of the rule pursuant to the Rule 9600 Series.
2. **New Supplementary Material .02 – Transmission of Customer Account Statements to Other Persons**

Proposed Supplementary Material .02 would provide that, except as required to comply with NASD Rule 3050 (Transactions for or by Associated Persons) and NYSE Rule 407 (Transactions—Employees of Members, Member Organizations and the Exchange), a firm may not address or send account statements or other communications relating to a customer’s account to other persons or entities or in care of a person holding power of attorney over the customer’s account unless (a) the customer has provided written instructions to the firm to send such statements or other communications to such person or entity or in care of a person holding power of attorney over the customer’s account; and (b) the firm sends duplicates of such statements or other communications in accordance with this rule directly to the customer either in paper format or electronically as provided in proposed Supplementary Material .03.

Proposed Supplementary Material .02 would limit the customer’s ability to decline to receive customer account statements beyond what was permitted in NYSE Rule 409(b) or NASD Rule 2340. NYSE Rule 409(b) prohibits, without NYSE’s consent, the delivery of statements, confirmations or other communications to customers (1) in care of a person holding power of attorney over the customer’s account unless either (A) the customer has provided written instructions to the member to send such confirmations, statements or communications to such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by the customer; or (2) at the address of any member or in care of a partner, stockholder who is actively engaged in the member’s business or employee of the member. NASD Rule 2340 does not contain a similar provision.<sup>14</sup>

### 3. Proposed Supplementary Material

Proposed FINRA Rule 2231 would transfer with minor changes several related interpretations under NYSE Rule 409. As such, the requirements would become applicable to all FINRA member firms. Specifically, the revised proposal would include:

- ▶ **Supplementary Material .05 – Information to be Disclosed on Statement.** The provision would require that customer account statements clearly and prominently disclose on the front of the statement the identity of the introducing firm and clearing firm (if different) and their respective contact information for customer service. The identity of the clearing firm and its contact information for customer service may appear on the back of the statement provided the information is in “bold” or “highlighted” letters; and that the clearing firm is a member of SIPC.
- ▶ **Supplementary Material .06 – Assets Externally Held and Included on Statements Solely as a Service to Customers.** The provision would require clear and prominent separation on the statement when a customer account statement includes assets that the firm does not hold on behalf of the customer and that are not included on the firm’s books and records, and sets forth other required disclosures.
- ▶ **Supplementary Material .07 – Use of Logos, Trademarks, etc.** The provision would require that firms not use the logo, trademark or other similar identification of a person (other than the introducing firm or clearing firm) on a customer account statement in a manner that is misleading or causes customer confusion.
- ▶ **Supplementary Material .08 – Use of Summary Statements.** The provision would set forth requirements when a firm seeks to jointly formulate or distribute customer account statements together with a statement summarizing or combining assets held in different accounts (summary statement).

In addition, proposed FINRA Rule 2231 would add the following as new supplementary material:

- ▶ **Supplementary Material .01 - Compliance with FINRA Rule 4311 (Carrying Agreements).** The provision would remind firms that Rule 4311(c)(2) generally requires each carrying agreement, in which accounts are carried on a fully disclosed basis, to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.
- ▶ **Supplementary Material .03 – Use of Electronic Media to Satisfy Delivery Obligations.** The provision would allow firms to satisfy their delivery obligations under the proposed rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes.
- ▶ **Supplementary Material .04 – Compliance with FINRA Rule 3150 (Holding of Customer Mail).** The provision would permit firms to hold customer mail, including customer account statements or other communications relating to a customer’s account, subject to the requirements of Rule 3150.<sup>15</sup>

### C. Request for Comment

FINRA requests comment on all aspects of the revised proposal, including any potential costs and burdens that the revised proposal could impose on firms. FINRA particularly requests comment concerning the following areas:

1. Does the revised proposal to retain the quarterly delivery requirement address the operational and cost concerns commenters raised about the proposed monthly delivery requirement in the initial filing?
2. From time to time, firms have raised questions regarding the scope of the term “general securities member” as defined in NASD Rule 2340(d). The definition excludes firms that do not carry customer accounts and do not hold customer funds or securities.<sup>16</sup> Should the definition of “general securities member”<sup>17</sup> be amended or clarified to better align with the obligations of clearing or carrying members? Should FINRA revise the proposed definition of “general securities member” to mean any firm that carries customer accounts, clears customer transactions or otherwise holds customer funds or securities? It is FINRA’s intent to require firms conducting a DVP/RVP business to comply with the requirements of the rule; should the definition be clarified to include firms conducting DVP/RVP business? <sup>18</sup> Separately, should the definition be clarified with respect to its application to firms that operate commission rebate or recapture programs (some acting as aggregators of such balances) and that hold such balances for customers?
3. What impact will proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons) have on existing practices with respect to the transmission of account statements and other documents to third parties? Commenters are encouraged to provide cost projections where practicable.
4. What is the current industry practice with respect to sending account statements to customers, for example, where the customer is disabled or incapacitated, resides in a nursing home, has a trusted person to review statements, or there is a valid power of attorney or guardianship established? Have firms implemented any safeguards or best practices to address these situations?
5. Should the proposed rule include specific exemptions that would allow firms not to send account statements to customers under identified situations? If so, what situations and why?

FINRA also specifically requests comments on the economic impact and expected beneficial results of the proposed rule:

1. What direct and indirect costs will result from proposed Supplementary Material .02?
2. Are the costs imposed by proposed Supplementary Material .02 warranted by the potential protection to customers from receiving duplicate account statements?
3. What benefits or burdens would result for customers from proposed Supplementary Material .02?
4. What impact, if any, would proposed Supplementary Material .02 have on business practices and competition in the financial industry?

FINRA requests that commenters provide empirical data or other factual support for their comments, whenever possible.

## Endnotes

1. For convenience, Incorporated NYSE Rules are referred to as NYSE Rules.
2. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
3. *See* SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
4. The term “general securities member,” is defined in NASD Rule 2340(d) to mean “any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3-1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this section.”
5. *See* Securities Exchange Act Release No. 59921 (May 14, 2009), 74 FR 23912 (May 21, 2009) (Notice of Filing File No. SR-FINRA-2009-028).
6. *See* the [SEC’s website](#) for a list of commenters to the initial filing.
7. *See* Securities Exchange Act Release No. 64969 (July 26, 2011), 76 FR 46340 (August 2, 2011) (Notice of Filing of Amendment No. 1 to File No. SR-FINRA-2009-028) (Amendment No. 1 to the initial filing).

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8. For example, a firm could send quarterly statements to customers if the firm relies on an appropriate rule, regulation, release, interpretation, “no-action” position or exemption issued by the SEC or its staff that (1) specifically applies to the fact situation of the activity; (2) provides relief from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (3) permits quarterly delivery of customer account statements. Similarly, a firm could send quarterly statements to customers for various passive activities, such as the receipt of funds in accounts that are not directly from a purchase or sale transaction, including the receipt of interest and dividends. A firm otherwise eligible to send quarterly account statements by meeting such requirements would have been required to provide customers access to current information on their accounts via the Internet and by telephone.
9. See the [SEC’s website](#) for a list of commenters to Amendment No. 1 to the initial filing.
10. See Securities Exchange Act Release No. 67588 (August 2, 2012), 77 FR 47470 (August 8, 2012) (Notice of Withdrawal of File No. SR-FINRA-2009-028).
11. In addition, the revised proposal would not include several supplementary materials from NYSE Rule 409. Specifically, the proposal would not adopt: (1) NYSE Rule Interpretation 409(a)/01 (Applicability), but would add Supplementary Material .01 (Compliance with FINRA Rule 4311 (Carrying Agreements)) to remind firms of their obligations under Rule 4311(c)(2); and (2) NYSE Rule Interpretation 409(b)/01 (Standards For Holding Mail For Foreign Customers), but would add Supplementary Material .04 (Compliance with FINRA Rule 3150 (Holding of Customer Mail)) to permit firms to hold customer account statements consistent with the requirements of Rule 3150.
12. See *supra* note 4.
13. See Securities Exchange Act Release No. 71545 (February 12, 2014), 79 FR 9535 (February 19, 2014) (Notice of Filing File No. SR-FINRA-2014-006). See Securities Exchange Act Release No. 72193 (May 20, 2014), 79 FR 30217 (May 27, 2014) (Order Instituting Proceeding to Determine Whether To Approve or Disapprove File No. SR-FINRA-2014-006). See also Amendment No. 1 to SR-FINRA-2014-006 and Response to Comments (July 11, 2014).
14. NYSE Rule 409(g) also provides that firms carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them. FINRA recommends eliminating NYSE Rule 409(g) because its provisions advising members to send duplicate account statements to guarantors is better addressed by the general requirement described above to obtain written instructions from the customer to send customer statements to third parties.
15. The SEC approved FINRA’s proposed rule change to adopt rules regarding supervision in the consolidated FINRA rulebook, including specifically FINRA Rule 3150 (Holding of Customer Mail). See Securities Exchange Act Release No. 71179 (December 23, 2013); 78 FR 79542 (December 30, 2013) (Order Granting Approval of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook, as Modified by Amendment No. 1) (File No. SR-FINRA-2013-025). The consolidated supervision rules become effective on December 1, 2014. See [Regulatory Notice 14-10](#).

16. See Securities Exchange Act Release No. 31319 (October 14, 1992); (Order Approving Proposed Rule Change Relating to Periodic Account Statements) (File No. SR-NASD-92-29).
17. See supra note 4.
18. The proposal would retain the current provisions of NASD Rule 2340(b) that permit firms not to send quarterly customer account statements to DVP/RVP customers if certain conditions are satisfied.