

Electronic Filing

New Template Available on FINRA Firm Gateway for Compliance With SEA Rule 17a-5(f)(2) (Statement Regarding Independent Public Accountant)

Executive Summary

In 2013, the SEC amended paragraph (f)(2) of SEA Rule 17a-5 to revise the statement regarding identification of a broker-dealer's independent public accountant that broker-dealers must file with the SEC and FINRA, as specified in the rule.¹ The new requirement became effective on June 1, 2014. This *Notice* is to announce that FINRA is making available, through the [Firm Gateway](#), a new template (referred to as the Rule 17a-5(f)(2) Statement) for members to file electronically with FINRA pursuant to the rule. Pursuant to NASD Rule 3170, all such statements must be filed with FINRA electronically, using the new template.²

Based on discussions with staff of the SEC Division of Trading and Markets, this *Notice* is also providing a set of Frequently Asked Questions for members' guidance.

Questions concerning this *Notice* may be directed to the member's Regulatory Coordinator.

The Rule 17a-5(f)(2) Statement is attached to this *Notice* as Attachment A.

Background & Discussion

Effective June 1, 2014, new requirements went into effect with respect to the statement regarding identification of a broker-dealer's independent public accountant that must be filed with the SEC and FINRA pursuant to SEA Rule 17a-5(f)(2). FINRA is making available a new template—the Rule 17a-5(f)(2) Statement—for members to file such statements with FINRA electronically. The template will be available on FINRA's Firm Gateway as of November 24, 2014. As of that date, FINRA will only accept Rule 17a-5(f)(2) Statements filed in electronic form.

October 2014

Suggested Routing

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

Key Topics

- ▶ Electronic Filing Requirements
- ▶ Frequently Asked Questions
- ▶ SEA Rule 17a-5(f)(2) (Statement Regarding Independent Public Accountant)

Referenced Rules and Notices

- ▶ NASD Rule 3170
- ▶ NTM 06-61
- ▶ Regulatory Notice 08-11
- ▶ SEA Rule 17a-5

Frequently Asked Questions

Q1. When must members file the Rule 17a-5(f)(2) Statement?

- A1. Because the related section of the amended Rule 17a-5 went into effect on June 1, 2014, there are distinct filing requirements for members with respect to their 2014 fiscal year end, and for members with respect to fiscal years ending in 2015 or later. The filing requirements are available in Question and Answer 4 of the SEC Division of Trading and Markets [Frequently Asked Questions Concerning the July 30, 2013 Amendments to the Broker-Dealer Financial Reporting Rule](#):

Question 4.

Paragraph (f)(2) of Rule 17a-5 requires a broker-dealer to file a statement regarding its independent public accountant *no later than* December 10 of each year. As a result of the amendments to Rule 17a-5, a broker-dealer that is required by Rule 17a-5 to engage an independent public accountant must file a new statement that contains the information and representations required under amended paragraph (f)(2) of Rule 17a-5 (even if the broker-dealer is not changing accountants).

Since the amendments to paragraph (f)(2) of Rule 17a-5 do not become effective until June 1, 2014, when must a broker-dealer file a new statement regarding its independent public accountant pursuant to paragraph (f)(2) of Rule 17a-5? What audit period should the new statement cover?

Answer 4:

A broker-dealer need not file a new statement regarding its independent public accountant under paragraph (f)(2) until after the amendments to this paragraph become effective on June 1, 2014. For a broker-dealer with a 2014 fiscal year end between June and December 2014, the new statement must be filed on or before the 10th day of the month in which the broker-dealer's fiscal year ends because the representations in the statement need to address the work that the accountant will perform with respect to the broker-dealer's annual reports for its fiscal year ending in 2014.

Broker-dealers that file their new statement between June and December 2014 for their 2014 fiscal year annual audit do not need to file a second new statement for their 2015 fiscal year by December 10, 2014, if the contractual commitment between the broker-dealer and independent public accountant is of a continuing nature. If the contractual commitment between the broker-dealer and independent public accountant is not of a continuing nature, then the broker-dealer must file a new statement under paragraph (f)(2) for the annual audit to be conducted the following calendar year no later than December 10, 2014.

Q2. If our firm files a Rule 17a-5(f)(2) Statement indicating that our engagement letter with our independent public accountant is of a continuing nature, providing for successive engagements, does our firm have any further Rule 17a-5(f)(2) Statement filing requirement?

A2. Under the SEC's rule, if the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required. If the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date.

Q3. Our firm recently replaced our independent public accountant. Pursuant to SEA Rule 17a-5(f)(3) we filed the Replacement of Accountant notification with FINRA electronically, and with the SEC in hard copy, as required. Do we also have to file the Rule 17a-5(f)(2) Statement?

A3. Yes. These are separate requirements under SEA Rule 17a-5. While the related templates will have certain identical information, the information also varies given the purpose of each notification. As such, the Replacement of Accountant under the SEA Rule 17a-5(f)(3) filing notification does not serve as a substitute for filing the Rule 17a-5(f)(2) Statement.

Q4. If our firm files the Rule 17a-5(f)(2) Statement with FINRA using the template provided, will we also have to file with the SEC?

A4. Yes. Pursuant to SEA Rule 17a-5(f)(1), the Rule 17a-5(f)(2) Statement must be filed with the SEC's principal office in Washington, DC, and the regional office of the SEC for the region in which the broker-dealer's principal place of business is located.

Q5. Our firm has a fiscal year end of June 30, 2014. We filed the Rule 17a-5(f)(2) Statement with FINRA in hard copy on June 10, 2014. Our engagement letter with our independent public accountant was signed in May 2014. Does our firm have to re-file the Rule 17a-5(f)(2) Statement electronically?

A5. No, your firm is not required to re-file the Rule 17a-5(f)(2) Statement electronically. However, your firm may elect to do so. To evidence such submission, members may print a copy of any financial notification filed with FINRA.³

Q6. There were unavoidable circumstances that caused our firm to be unable to file the Rule 17a-5(f)(2) Statement on time. Should we still file electronically?

A6. Yes. A member's obligation to file is not eliminated just because unavoidable circumstances caused the member to file after the due date. Members should note that failing to obtain an engagement letter with an accountant by the due date (*i.e.*, December 1 of the preceding calendar year unless the firm is a new member or is filing the Rule 17a-5(f)(2) Statement between June 1, 2014, and December 31, 2014) does not constitute unavoidable circumstances. Members should work with their accountant to obtain an engagement letter by the required due date. *See* Q1 and A1 above.

Q7. What are the qualifications of independent public accountants?

A7. As of June 1, 2014, SEA Rule 17a-5(f)(1) as amended provides:

“Qualifications of independent public accountants. The independent public accountant must be qualified and independent in accordance with § 210.2-01 [under Regulation S-X] and the independent public accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.”

Endnotes

1. *See* Securities Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (August 21, 2013) (Final Rule: Broker-Dealer Reports).
2. For more background regarding electronic filing requirements pursuant to NASD Rule 3170, *see* [Notice to Members 06-61](#) (Electronic Filing Requirements) (November 2006) and [Regulatory Notice 08-11](#) (Electronic Filing) (March 2008).
3. *See* Question and Answer 5 in *Regulatory Notice 08-11*.

Attachment A

STATEMENT REGARDING INDEPENDENT PUBLIC ACCOUNTANT UNDER SEA RULE 17a-5(f)(2)

FINRA is making this template available for members to comply with SEA Rule 17a-5(f)(2), as amended, which went into effect on June 1, 2014 and sets forth new requirements as to the statement members must file to identify their independent public accountant. Members must file the statement electronically with FINRA. The statement must also be filed with the SEC's Washington, DC office and the SEC's regional office in which the member's principal place of business is located.

(A) Member Information

- a. Name: _____
- b. Registration Number
 - i. FINRA CRD Number: _____
 - ii. SEC Registration Number: _____
- c. Address: _____
- d. Telephone: _____
- e. E-mail Contact: _____

(B) Independent Public Accountant Information¹

- a. Name: _____
- b. Address: _____
- c. Telephone: _____
- d. Contact Name: _____

(C) Fiscal Year End Information

- a. The date of the fiscal year end of the annual reports of the firm covered by the engagement:

MM/DD/YY

(D) Engagement of Independent Public Accountant Information

- a. Engagement Date: MM/DD/YY
- b. The engagement (check one):
 - i. () is for a single year.
 - ii. () is of a continuing nature.

¹ Pursuant to SEA Rule 17a-5(f)(2)(iv) any broker or dealer that is not required to file reports prepared by an independent public accountant must file a statement required under SEA Rule 17a-5(f)(2)(i) indicating the date as of which the unaudited reports will be prepared.

(E) Representation Regarding Independent Public Accountant

- a. A representation that the independent public accountant engaged by the firm has undertaken the items enumerated in SEA Rule 17a-5(g)(1)² and (g)(2) with respect to the preparation of the reports required under SEA Rule 17a-5(d)(1)(i)(C).
- i. Financial Report as described in SEA Rule 17a-5(d)(1)(i)(A); and
- ii. Check one:
1. Compliance Report as described in SEA Rule 17a-5(d)(1)(i)(B)(1); or
2. Exemption Report as described in SEA Rule 17a-5(d)(1)(i)(B)(2)

(F) Does the firm clear transactions or carry customer accounts? Yes No

- a. If Yes is selected, the firm must make the following representation as required by SEA Rule 17a-5(f)(2)(ii)(F):
- i. By filing this representation, and checking the box herein, the firm agrees to allow representatives of the SEC or FINRA, if requested in writing for purposes of an examination of the firm, to review the audit documentation associated with the reports of the independent public accountant filed under SEA Rule 17a-5(d)(1)(i)(C).
- b. If Yes is selected, the firm must make the following representation as required by SEA Rule 17a-5(f)(2)(ii)(G):
- i. By filing this representation, and checking the box herein, the firm agrees to allow the independent public accountant to discuss with representatives of the SEC and FINRA, if requested in writing for purposes of an examination of the firm, the findings associated with the reports of the independent public account filed under SEA Rule 17a-5(d)(1)(i)(C).

² SEA Rule 17a-5(g) (Engagement of independent public accountant) provides as follows:

"The independent public accountant engaged by the broker or dealer to provide the reports required under paragraph (d)(1)(i)(C) of this section must, as part of the engagement, undertake the following, as applicable:

"(1) To prepare an independent public accountant's report based on an examination of the financial report required to be filed by the broker or dealer under paragraph (d)(1)(i)(A) of this section in accordance with standards of the Public Company Accounting Oversight Board; and

"(2)(i) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (d)(3)(i)(A)(2) through (5) of this section in the compliance report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(1) of this section in accordance with standards of the Public Company Accounting Oversight Board; or (ii) To prepare an independent public accountant's report based on a review of the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(2) of this section in accordance with standards of the Public Company Accounting Oversight Board."