

Sales on Military Installations

SEC Approves Rule Governing Sales of Securities on Military Installations to Members of the U.S. Armed Forces or Their Dependents

Effective Date: March 30, 2016

Executive Summary

The SEC approved the adoption of FINRA Rule 2272 (Sales and Offers of Sales of Securities on Military Installations) to govern sales and offers of sales of securities by firms on the premises of any military installation to members of the U.S. Armed Forces or their dependents.¹ The rule becomes effective March 30, 2016.

The rule text is available in Attachment A.

Questions regarding this *Notice* should be directed to Jeanette Wingler, Assistant General Counsel, Office of the General Counsel, at (202) 728-8013 or Jeanette.Wingler@FINRA.org.

Background and Discussion

The Military Personnel Financial Services Protection Act (“Military Act”) was enacted to protect members of the U.S. Armed Forces from unscrupulous practices regarding sales of insurance, financial and investment products.² Congress amended Section 15A(b) of the Securities Exchange Act of 1934 with the enactment of the Military Act to require FINRA, as a registered securities association, to adopt rules governing the sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.³ The rules must require: (1) the broker-dealer performing brokerage services to clearly and conspicuously disclose to potential investors (a) that the securities offered are not being offered or provided by the broker-dealer on behalf of the federal government, and that its offer is not sanctioned, recommended, or encouraged by the federal government and (b) the identity of the registered broker-dealer offering the securities; (2) the broker-dealer to perform an appropriate suitability determination, including consideration of costs and knowledge about

October 2015

Suggested Routing

- ▶ Compliance
- ▶ Legal

Registered Representatives

- ▶ Senior Management

Key Topics

- ▶ Sales Practices
- ▶ Suitability
- ▶ Supervision

Referenced Rules & Notices

- ▶ FINRA Rule 2111
- ▶ FINRA Rule 2272
- ▶ Regulatory Notice 12-25

securities, prior to making a recommendation of a security to a member of the U.S. Armed Forces or a dependent thereof; and (3) that no person receive any referral fee or incentive compensation in connection with a sale or offer of sale of securities, unless the person is an associated person of a registered broker-dealer and is qualified pursuant to the rules of a self-regulatory organization.⁴ Rule 2272 is intended to comply with the statutory requirements.

Scope

The rule applies to offers and sales of securities on the premises of a military installation to members of the U.S. Armed Forces or their dependents. Rule 2272(a) defines “military installation” to include any federally owned, leased or operated base, reservation, post, camp, building or other facility to which members of the U.S. Armed Forces are assigned for duty, including barracks, transient housing and family quarters.

FINRA reminds firms that any such sales or offers of sales of securities off the premises of a military installation must comply with applicable FINRA rules, including suitability requirements, and that any misleading representation made to a member of the U.S. Armed Forces or a dependent thereof off the premises of a military installation that the securities are being offered or provided on behalf of, or sanctioned, recommended, or encouraged by the federal government would be otherwise prohibited by FINRA rules.

Disclosure

Rule 2272(b) requires that any firm engaging in sales or offers of sales of securities on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof clearly and conspicuously disclose in writing, which may be electronic, to a potential investor prior to engaging in sales or offers of sales of securities to the investor: (1) the identity of the member offering the securities; and (2) that the securities offered are not being offered or provided by the member on behalf of the federal government, and that the offer of such securities is not sanctioned, recommended or encouraged by the federal government.

FINRA reminds members that electronic delivery of the disclosures required by proposed Rule 2272 must be consistent with SEC guidance on the use of electronic media to satisfy delivery obligations which, among other things, requires affirmative consent of the customer for delivery of certain documents.⁵

Suitability

Rule 2272(c) provides that a firm must satisfy the suitability obligations imposed by FINRA Rule 2111 (Suitability) when making a recommendation on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof. The suitability obligations imposed by Rule 2111 satisfy the statutory requirement that FINRA adopt

rules requiring its members to perform an appropriate suitability determination, including consideration of costs and knowledge about securities, prior to making a recommendation to a member of the U.S. Armed Forces or a dependent thereof.⁶

Referrals Fees and Incentive Compensation

Rule 2272(d) prohibits a member from causing a person to receive a referral fee or incentive compensation in connection with sales or offers of sales of securities on the premises of a military installation with any member of the U.S. Armed Forces or a dependent thereof, unless such person is an associated person of a registered broker-dealer who is appropriately qualified consistent with FINRA rules, and the payment complies with applicable federal securities laws and FINRA rules.

Endnotes

1. See Securities Exchange Act Release No. 75633 (August 6, 2015) (Order Approving File No. SR-FINRA-2015-009).
2. Public Law 109-290, 120 Stat. 1317.
3. 15 U.S.C. 78 o-3(b).
4. 15 U.S.C. 78 o-3(b)(14).
5. See Securities Exchange Act Release No. 37182 (May 6, 1996); 61 FR 24644 (May 15, 1996). See also Securities Exchange Act Release No. 42728 (April 28, 2000); 65 FR 25843 (May 4, 2000).
6. FINRA has previously stated that the cost associated with a recommendation is one factor for a member or an associated person to consider when determining whether a security or investment strategy is suitable for a customer pursuant to Rule 2111. See *Regulatory Notice 12-25* (May 2012) (stating that the cost associated with a recommendation is one of many important factors to consider when determining whether the subject security or investment strategy involving a security or securities is suitable). Further, Rule 2111 requires a member or associated person to use reasonable diligence to obtain and consider, among other things, the customer's investment experience. See Rule 2111(a) (requiring that a member or associated person use reasonable diligence to obtain and consider a customer's investment profile, which includes the customer's investment experience). See also *Regulatory Notice 12-25*.

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Attachment A

New language is underlined.

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Text of New FINRA Rule

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2200. COMMUNICATIONS AND DISCLOSURES

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2272. Sales and Offers of Sales of Securities on Military Installations

(a) Military Installations

For purposes of this Rule, a “Military Installation” shall mean any federally owned, leased or operated base, reservation, post, camp, building or other facility to which members of the U.S. Armed Forces are assigned for duty, including barracks, transient housing and family quarters.

(b) Disclosures

A member engaging in sales or offers of sales of securities on the premises of a Military Installation to any member in the U.S. Armed Forces or a dependent thereof shall clearly and conspicuously disclose in writing, which may be electronic, to such potential investor prior to engaging in sales or offers of sales of securities to such potential investor:

(1) The identity of the member offering the securities; and

(2) That the securities offered are not being offered or provided by the member on behalf of the Federal Government, and that the offer of such securities is not sanctioned, recommended or encouraged by the Federal Government.

(c) Suitability

A member shall satisfy the suitability obligations imposed by FINRA Rule 2111 when making a recommendation on the premises of a Military Installation to any member of the U.S. Armed Forces or a dependent thereof.

(d) Fees and Compensation

No member shall cause a person to receive a referral fee or incentive compensation in connection with sales or offers of sales of securities on the premises of a Military Installation with any member of the U.S. Armed Forces or a dependent thereof, unless such person is an associated person of a registered broker-dealer who is appropriately qualified consistent with FINRA rules, and the payment complies with applicable federal securities laws and FINRA rules.

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