Regulatory Notice 16-22

Accounts At Other Broker-Dealers and Financial Institutions

SEC Approves Consolidated FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions)

Effective Date: April 3, 2017

June 2016

Notice Type
- Consolidated Rulebook
- New Rule

Suggested Routing
- Compliance
- Legal
- Senior Management

Key Topics
- Securities Transactions of Associated Persons
- Supervision

Referenced Rules & Notices
- FINRA Rule 3110
- NASD Rule 3050
- NYSE Rule 407
- NYSE Rule 407A
- NYSE Rule Interpretation 407/01
- NYSE Rule Interpretation 407/02

Executive Summary

The SEC has approved[1] FINRA's proposed rule change to adopt a new, consolidated[2] rule governing accounts opened or established by associated persons at firms other than the firm at which they are employed. The new rule—FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions)—helps facilitate effective oversight of such accounts. New FINRA Rule 3210 replaces NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.

The text of new FINRA Rule 3210 is available in Attachment A.

The rule change takes effect on April 3, 2017.

Questions regarding this *Notice* should be directed to Adam Arkel, Associate General Counsel, Office of General Counsel, at (202) 728-6961 or *adam.arkel@finra.org*.

Background & Discussion

Sound supervisory practices require that a member firm monitor personal accounts opened or established outside of the firm by its associated persons. New FINRA Rule 3210 combines and streamlines longstanding provisions of the NASD and NYSE rules that address this area[3] and, in combination with FINRA Rule 3110(d), which addresses securities transactions review and investigation,[4] helps facilitate effective oversight of the trading activities of associated persons of member firms. This *Regulatory Notice* provides an overview of the requirements of new Rule 3210.

Obligations of Associated Persons

Prior Written Consent Requirement

FINRA Rule 3210 requires that an associated person[5] must obtain the prior written consent of his or her employer when opening an account, as specified by the rule, at another member or other financial institution. Specifically, paragraph (a) under the rule provides that no person associated with a member (referred to as the "employer member") shall, without the prior written consent of the member, open or otherwise establish at a member other than the employer member (referred to as the "executing member"), or at any other financial institution,[6] any account in which securities transactions can be effected[7] and in which the associated person has a beneficial interest.[8]

Presumption of Beneficial Interest; Rebutting the Presumption

The rule specifies accounts in which an associated person is presumed to have a beneficial interest. As such, the rule's requirements would apply to these accounts. Specifically, Supplementary Material .02 provides that, for purposes of Rule 3210, the associated person shall be presumed to have a beneficial interest in, and to have established, any account that is held by:[9]

a. the spouse of the associated person;

b. a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person;

c. any other related individual over whose account the associated person has control; or

d. any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.

However, the rule makes allowance for rebutting the presumption as to specified accounts. Specifically, Supplementary Material .02 provides that, for purposes of spouse and child accounts as set forth in (a) and (b) above, an associated person need not be presumed to have a beneficial interest in, or to have established, an account if the associated person demonstrates, to the reasonable satisfaction of the employer member, that the associated person derives no economic benefit from, and exercises no control over, the account.

FINRA notes that, because the accounts specified in (c) and (d) above involve control by the associated person, there would be no meaningful purpose in attempting to rebut the presumption of the associated person's beneficial interest in such accounts.[10] As such, the rule's requirements would apply to these accounts.

Notification Requirement

Associated persons have notification obligations under the new rule. Paragraph (b) of Rule 3210 provides that any associated person, prior to opening or otherwise establishing an account subject to the rule, must notify in writing the executing member, or other financial institution, of his or her association with the employer member.[11]

Accounts Established Prior to Association With the Member

The rule makes allowance for accounts opened by an associated person prior to his or her association with the employer member. Specifically, Supplementary Material .01 provides that, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within 30 calendar days of becoming so associated, must obtain the written consent of the employer member to maintain the account and must notify in writing the executing member or other financial institution of his or her association with the employer member.[12]

Accounts at Non-Member Financial Institutions

Supplementary Material .04 of the new rule provides that, with respect to an account subject to the rule at a financial institution other than a member, the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such account.

Obligations of Executing Members

Executing members have specified obligations under the rule. Paragraph (c) under Rule 3210 provides that an executing member must, upon written request by the employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.[13]

Transactions and Accounts Not Subject to the Rule

Supplementary Material .03 of the rule provides that the rule's requirements shall not apply to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12,[14] qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities,[15] or to Monthly Investment Plan type accounts.

Endnotes

1. *See* Securities Exchange Act Release No. 77550 (April 7, 2016), 81 FR 21924 (April 13, 2016) (Order Approving Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions), as Modified by Partial Amendment No. 1 and Partial Amendment No. 2; File No. SR-FINRA-2015-029).

2. 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 member firms, 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 member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice 03/12/08* (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

3. *See* NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02. These rules will be deleted from the FINRA rulebook as of April 3, 2017, the effective date of new Rule 3210.

4. FINRA Rule 3110(d) (Transaction Review and Investigation) sets forth requirements for supervisory procedures for members to comply with the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA) (Pub. L. No. 100-704, 102 Stat. 4677). Paragraph (d)(1) of Rule 3110 requires that a member's supervisory procedures must include a process for the review of securities transactions reasonably designed to identify trades that may violate the provisions of the Exchange Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for the accounts specified under paragraphs (d)(1)(A) through (d)(1)(D) of the rule. In the interest of clarity, FINRA has reminded members that, though new Rule 3210 includes the objective of working in combination with Rule 3110(d), the new rule's scope is not limited to reviews pursuant to that provision. *See* SR-FINRA-2015-029, Partial Amendment No. 1. Members may among other things need the information that they obtain pursuant to Rule 3210 for purposes of helping manage conflicts of interest in their businesses. *See, e.g.*, Report on Conflicts of Interest (October 2013). More broadly, FINRA noted in Partial Amendment No. 1 that members are responsible for establishing and maintaining systems for the supervision of their associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. As such, members' reviews of the outside transactions of their associated persons could relate to other facets of conduct under FINRA rules, not just FINRA Rule 3110(d).

5. The terms "person associated with a member" and "associated person of a member" include, among others, registered representatives. *See* paragraph (rr) of Article I of the FINRA By-Laws.

6. Supplementary Material .05 provides that, for the purposes of the rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to SEA Section 15(b)(11), domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

7. The phrase "any account in which securities transactions can be effected" is intended to include any account, regardless of type, where securities transactions can take place as specified under the rule.

8. "Beneficial interest" refers, broadly, to any economic interest. *See, e.g.*, FINRA Rule 5130(i)(1), which defines "beneficial interest" to mean, in part, "any economic interest, such as the right to share in gains or losses."

9. Members should note that these types of accounts are intended to generally align with "covered accounts" as defined pursuant to FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions under Rule 3110(d)(1). *See* note 4.

10. *See* SR-FINRA-2015-029, Partial Amendment No. 2.

11. FINRA has noted that the prior written consent and notification requirements of paragraph (a) and paragraph (b) under the new rule would go to accounts that the associated person opens or establishes, as specified by the rule, on or after the new rule's effective date of April 3, 2017. *See* SR-FINRA-2015-029, Partial Amendment No. 1.

12. The requirements of Supplementary Material .01 apply without regard to when the account was opened (including, for instance, accounts opened before the new rule's effective date) whenever the associated person enters into a new association with a member. *See* SR-FINRA-2015-029, Partial Amendment No. 1.

13. The rule does not prescribe any particular methodology as to transmission of the specified information. FINRA noted in Partial Amendment No. 1 that the rule is intended to permit members all reasonable flexibility as to the manner of obtaining and reviewing the information, whether by hard copy or electronic means. *See* SR-FINRA-2015-029, Partial Amendment No. 1.

14. MSRB Rule D-12 defines municipal fund security to mean "a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940."

15. FINRA notes that "limited" means that only transactions as set forth in the Supplementary Material can be effected in the account.

ATTACHMENT A

Text of New FINRA Rule 3210

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3210. Accounts At Other Broker-Dealers and Financial Institutions

(a) No person associated with a member ("employer member") shall, without the prior written consent of the member, open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution, any account in which securities transactions can be effected and in which the associated person has a beneficial interest.

(b) Any associated person, prior to opening or otherwise establishing an account subject to this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member.

(c) An executing member shall, upon written request by an employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to this Rule.

• • • Supplementary Material: ----------

.01 Account Opened Prior to Association With Employer Member. If the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within 30 calendar days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member.

.02 Related and Other Persons. For purposes of this Rule, the associated person shall be presumed to have a beneficial interest in, and to have established, any account that is held by:

(a) the spouse of the associated person;

(b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person;

(c) any other related individual over whose account the associated person has control; or

(d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.

For purposes of paragraphs (a) and (b) of this Supplementary Material .02, an associated person need not be presumed to have a beneficial interest in, or to have established, an account if the associated person demonstrates, to the reasonable satisfaction of the employer member, that the associated person derives no economic benefit from, and exercises no control over, the account.

.03 Transactions and Accounts Not Subject To This Rule. The requirements of this Rule shall not apply to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12, qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.

.04 Accounts At a Financial Institution Other Than a Member. With respect to an account subject to this Rule at a financial institution other than a member, the employer member shall consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such account.

.05 Other Financial Institution. For purposes of this Rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

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