2010. STANDARDS OF COMMERCIAL HONOR AND PRINCIPLES OF TRADE

The Rule | Notices

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Cross References–

1122, Filing of Misleading Information as to Membership or Registration
2111, Suitability
2121.01, Mark-Up Policy
2342, "Breakpoint" Sales
5130, Restrictions on the Purchase and Sale of Initial Equity Public Offerings
5210, Publication of Transactions and Quotations
5220, Offers at stated Prices
5270, Front Running of Block Transactions
5320, Prohibition Against Trading Ahead of Customer Orders
IM-10100, Failure to Act Under Provisions of Code of Arbitration Procedure
11111, Refusal to Abide by Rulings of the Committee
IM-12000, Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes
IM-13000, Failure to Act Under Provisions of Code of Arbitration Procedure for Industry Disputes

Amended by SR-FINRA-2008-028 eff. Dec. 15, 2008.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006

Selected Notices: 96-44, 08-57.

2020. Use of Manipulative, Deceptive or Other Fraudulent Devices

The Rule | Notices

No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

Cross References–

2111, Suitability
5210, Publication of Transactions and Quotations

Amended by SR-FINRA-2008-028 eff. Dec. 15, 2008.

Selected Notice: 08-57.

2030. Engaging in Distribution and Solicitation Activities with Government Entities

(a) Limitation on Distribution and Solicitation Activities

No covered member shall engage in distribution or solicitation activities for compensation with a government entity on behalf of an investment adviser that provides or is seeking to provide investment advisory services to such government entity within two years after a contribution to an official of the government entity is made by the covered member or a covered associate (including a person who becomes a covered associate within two years after the contribution is made).

(b) Prohibition on Soliciting and Coordinating Contributions

No covered member or covered associate may solicit or coordinate any person or political action committee to make any:

(1) Contribution to an official of a government entity in respect of which the covered member is engaging in, or seeking to engage in, distribution or solicitation activities on behalf of an investment adviser; or

(2) Payment to a political party of a state or locality of a government entity with which the covered member is engaging in, or seeking to engage in, distribution or solicitation activities on behalf of an investment adviser.

(c) Exceptions

(1) De minimis Exception

Paragraph (a) shall not apply to contributions made by a covered associate that is a natural person, to officials for whom the covered associate was entitled to vote at the time of the contributions and which in the aggregate do not exceed $350 to any one official, per election, or to officials for whom the covered associate was not entitled to vote at the time of the contributions and which in the aggregate do not exceed $150 to any one official, per election.

(2) Exception for Certain New Covered Associates

The prohibitions of paragraph (a) shall not apply to a covered member as a result of a contribution made by a natural person more than six months prior to becoming a covered associate of the covered member unless such person, after becoming a covered associate, engages in, or seeks to engage in, distribution or solicitation activities with a government entity on behalf of the covered member.

(3) Exception for Certain Returned Contributions

(A) A covered member that is prohibited from engaging in distribution or solicitation activities with a government entity pursuant to paragraph (a) as a result of a contribution made by a covered associate is excepted from such prohibition, subject to subparagraphs (B) and (C) below, upon satisfaction of the following requirements:

(i) The covered member must have discovered the contribution that resulted in the prohibition within four months of the date of such contribution;

(ii) Such contribution must not have exceeded $350; and

(iii) The contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the covered member.

(B) In any calendar year, a covered member that has reported on its annual Schedule I to Form X-17A-5 that it has more than 150 registered persons is entitled to no more than three exceptions pursuant to subparagraph (A), and a covered member that has reported on its annual Schedule I to Form X-17A-5 that it has 150 or fewer registered persons is entitled to no more than two exceptions pursuant to subparagraph (A).

(C) A covered member may not rely on the exception provided in subparagraph (A) more than once with respect to contributions by the same covered associate of the covered member regardless of time period.

(d) Prohibitions as Applied to Covered Investment Pools

For purposes of this Rule:

(1) A covered member that engages in distribution or solicitation activities with a government entity on behalf of a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that covered member was engaging in or seeking to engage in distribution or solicitation activities with the government entity on behalf of the investment adviser to the covered investment pool directly; and

(2) An investment adviser to a covered investment pool in which a government entity invests or is solicited to invest shall be treated as though that investment adviser were providing or seeking to provide investment advisory services directly to the government entity.

(e) Further Prohibitions

It shall be a violation of this Rule for any covered member or any of its covered associates to do anything indirectly that, if done directly, would result in a violation of this Rule.

(f) Exemptions

FINRA, upon application, may conditionally or unconditionally exempt a covered member from the prohibition described in paragraph (a). In determining whether to grant an exemption, FINRA shall consider, among other factors:

(1) Whether the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this Rule;

(2) Whether the covered member:

(A) Before the contribution resulting in the prohibition was made, adopted and implemented policies and procedures reasonably designed to prevent violations of this Rule;

(B) Prior to or at the time the contribution that resulted in such prohibition was made, had no actual knowledge of the contribution; and

(C) After learning of the contribution:

(i) Has taken all available steps to cause the contributor involved in making the contribution that resulted in such prohibition to obtain a return of the contribution; and

(ii) Has taken such other remedial or preventive measures as may be appropriate under the circumstances;

(3) Whether, at the time of the contribution, the contributor was a covered associate or otherwise an associated person of the covered member, or was seeking to become an associated person, or covered associate of the covered member;

(4) The timing and amount of the contribution that resulted in the prohibition;

(5) The nature of the election (e.g., federal, state or local); and

(6) The contributor's apparent intent or motive in making the contribution that resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(g) Definitions

For purposes of this Rule:

(1) "Contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made for:

(A) The purpose of influencing any election for federal, state or local office;

(B) Payment of debt incurred in connection with any such election; or

(C) Transition or inaugural expenses of the successful candidate for state or local office.

(2) "Covered associate" means:

(A) Any general partner, managing member or executive officer of a covered member, or other individual with a similar status or function;

(B) Any associated person of a covered member who engages in distribution or solicitation activities with a government entity for such covered member;

(C) Any associated person of a covered member who supervises, directly or indirectly, the government entity distribution or solicitation activities of a person in subparagraph (B) above; and

(D) Any political action committee controlled by a covered member or a covered associate.

(3) "Covered investment pool" means:

(A) Any investment company registered under the Investment Company Act that is an investment option of a plan or program of a government entity; or

(B) Any company that would be an investment company under Section 3(a) of the Investment Company Act but for the exclusion provided from that definition by either Section 3(c)(1), 3(c)(7) or 3(c)(11) of that Act.

(4) "Covered member" means any member except when that member is engaging in activities that would cause the member to be a municipal advisor as defined in Exchange Act Section 15B(e)(4), SEA Rule 15Ba1-1(d)(1) through (4) and other rules and regulations thereunder;

(5) "Executive officer of a covered member" means:

(A) The president;

(B) Any vice president in charge of a principal business unit, division or function (such as sales, administration or finance);

(C) Any other officer of the covered member who performs a policy-making function; or

(D) Any other person who performs similar policy-making functions for the covered member.

(6) "Government entity" means any state or political subdivision of a state, including:

(A) Any agency, authority or instrumentality of the state or political subdivision;

(B) A pool of assets sponsored or established by the state or political subdivision or any agency, authority or instrumentality thereof, including but not limited to a defined benefit plan as defined in Section 414(j) of the Internal Revenue Code, or a state general fund;

(C) A plan or program of a government entity; and

(D) Officers, agents or employees of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.

(7) "Investment adviser" means any investment adviser registered (or required to be registered) with the Commission, or unregistered in reliance on the exemption available under Section 203(b)(3) of the Investment Advisers Act, or that is an exempt reporting adviser, as defined in Rule 204-4(a) of that Act.

(8) "Official" means any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office:

(A) Is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity; or

(B) Has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.

(9) "Payment" means any gift, subscription, loan, advance or deposit of money or anything of value.

(10) "Plan or program of a government entity" means any participant-directed investment program or plan sponsored or established by a state or political subdivision or any agency, authority or instrumentality thereof, including but not limited to a qualified tuition plan authorized by Section 529 of the Internal Revenue Code, a retirement plan authorized by Section 403(b) or 457 of the Internal Revenue Code, or any similar program or plan.

(11) "Solicit" means:

(A) With respect to investment advisory services, to communicate, directly or indirectly, for the purpose of obtaining or retaining a client for, or referring a client to, an investment adviser; and

(B) With respect to a contribution or payment, to communicate, directly or indirectly, for the purpose of obtaining or arranging a contribution or payment.

Adopted by SR-FINRA-2015-056 eff. Aug. 20, 2017.

Selected Notice: 16-40

2040. Payments to Unregistered Persons

(a) General

No member or associated person shall, directly or indirectly, pay any compensation, fees, concessions, discounts, commissions or other allowances to:

(1) any person that is not registered as a broker-dealer under Section 15(a) of the Exchange Act but, by reason of receipt of any such payments and the activities related thereto, is required to be so registered under applicable federal securities laws and SEA rules and regulations; or

(2) any appropriately registered associated person unless such payment complies with all applicable federal securities laws, FINRA rules and SEA rules and regulations.

(b) Retiring Representatives

(1) A member may pay continuing commissions to a retiring registered representative of the member, after he or she ceases to be associated with such member, that are derived from accounts held for continuing customers of the retiring registered representative regardless of whether customer funds or securities are added to the accounts during the period of retirement, provided that:

(A) a bona fide contract between the member and the retiring registered representative providing for the payments was entered into in good faith while the person was a registered representative of the member and such contract, among other things, prohibits the retiring registered representative from soliciting new business, opening new accounts, or servicing the accounts generating the continuing commission payments; and

(B) the arrangement complies with applicable federal securities laws, SEA rules and regulations.

(2) The term "retiring registered representative," as used in this Rule shall mean an individual who retires from a member (including as a result of a total disability) and leaves the securities industry. In the case of death of the retiring registered representative, the retiring registered representative's beneficiary designated in the written contract or the retiring registered representative's estate if no beneficiary is so designated may be the beneficiary of the respective member's agreement with the deceased representative.

(c) Nonregistered Foreign Finders

A member may pay to a nonregistered foreign person (the “finder”) transaction-related compensation based upon the business of customers the finder directs to the member if the following

conditions are met:

(1) the member has assured itself that the finder who will receive the compensation is not required to register in the United States as a broker-dealer nor is subject to a disqualification as defined in Article III, Section 4 of FINRA's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(2) the finder is a foreign national (not a U.S. citizen) or foreign entity domiciled abroad;

(3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(4) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act, that discloses what compensation is being paid to finders;

(5) customers provide written acknowledgment to the member of the existence of the compensation arrangement and such acknowledgment is retained and made available for inspection by FINRA;

(6) records reflecting payments to finders are maintained on the member's books, and actual agreements between the member and the finder are available for inspection by FINRA; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

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

.01 Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act. For purposes of Rule 2040, FINRA expects members to determine that their proposed activities would not require the recipient of the payments to register as a broker-dealer and to reasonably support such determination. Members that are uncertain as to whether an unregistered person may be required to be registered under Section 15(a) of the Exchange Act by reason of receiving payments from the member can derive support for their determination by, among other things, (1) reasonably relying on previously published releases, no-action letters or interpretations from the Commission or Commission staff that apply to their facts and circumstances; (2) seeking a no-action letter from the Commission staff; or (3) obtaining a legal opinion from independent, reputable U.S. licensed counsel knowledgeable in the area. The member's determination must be reasonable under the circumstances and should be reviewed periodically if payments to the unregistered person are ongoing in nature. In addition, a member must maintain books and records that reflect the member's determination.

Amended by SR-FINRA-2014-037 eff. Aug. 24, 2015.
Adopted by SR-NASD-94-51 eff. Feb. 15, 1995 (Paragraph (c)).

Selected Notices: 95-37, 15-07.

2060. Use of Information Obtained in Fiduciary Capacity

The Rule | Notices

A member who in the capacity of paying agent, transfer agent, trustee, or in any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

Cross Reference–

Rule 2150. Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts

Amended by SR-FINRA-2009-067 eff. Feb. 15, 2010.

Selected Notice: 09-72.

2070. Transactions Involving FINRA Employees

The Rule | Notices

(a) When a member has actual notice that a FINRA employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing the member to provide duplicate account statements to FINRA.

(b) Members shall not directly or indirectly make any loan of money or securities to any FINRA employee. However, this prohibition does not apply to loans made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

(c) Notwithstanding the annual dollar limitation set forth in Rule 3220(a), members shall not directly or indirectly give, or permit to be given, anything above nominal value to any FINRA employee who has responsibility for a regulatory matter involving the member. For purposes of this paragraph, the term "regulatory matter" includes, but is not limited to, examinations, disciplinary proceedings, membership applications and dispute-resolution proceedings.

Amended by SR-FINRA-2008-027 eff. Dec. 15, 2008.
Adopted by SR-NASD-00-58 eff. Nov. 17, 2000.

Selected Notice: 08-57.

2080. Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System

The Rule | Notices

(a) Members or associated persons seeking to expunge information from the CRD system arising from disputes with customers must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief.

(b) Members or associated persons petitioning a court for expungement relief or seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents unless this requirement is waived pursuant to subparagraph (1) or (2) below.

(1) Upon request, FINRA may waive the obligation to name FINRA as a party if FINRA determines that the expungement relief is based on affirmative judicial or arbitral findings that:

(A) the claim, allegation or information is factually impossible or clearly erroneous;

(B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or

(C) the claim, allegation or information is false.

(2) If the expungement relief is based on judicial or arbitral findings other than those described above, FINRA, in its sole discretion and under extraordinary circumstances, also may waive the obligation to name FINRA as a party if it determines that:

(A) the expungement relief and accompanying findings on which it is based are meritorious; and

(B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

(c) For purposes of this Rule, the terms "sales practice violation," "investment-related," and "involved" shall have the meanings set forth in the Uniform Application for Securities Industry Registration or Transfer ("Form U4") in effect at the time of issuance of the subject expungement order.

Amended by SR-FINRA-2009-016 eff. Aug. 17, 2009.
Amended by SR-NASD-2003-200 eff. April 12, 2004.
Adopted by SR-NASD-2002-168 eff. April 12, 2004.

Selected Notice: 04-16, 09-33.

2081. Prohibited Conditions Relating to Expungement of Customer Dispute

No member or associated person shall condition or seek to condition settlement of a dispute with a customer on, or to otherwise compensate the customer for, the customer's agreement to consent to, or not to oppose, the member's or associated person's request to expunge such customer dispute information from the CRD system.

Adopted by SR-FINRA-2014-020 eff. July 30, 2014.

Selected Notice: 14-31

2090. Know Your Customer

The Rule | Notices

Every member shall use reasonable diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

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

.01 Essential Facts. For purposes of this Rule, facts "essential" to "knowing the customer" are those required to (a) effectively service the customer's account, (b) act in accordance with any special handling instructions for the account, (c) understand the authority of each person acting on behalf of the customer, and (d) comply with applicable laws, regulations, and rules.

Adopted by SR-FINRA-2010-039 and amended by SR-FINRA-2011-016 eff. July 9, 2012.

Selected Notices: 11-02, 11-25, 12-25.

2111. Suitability

The Rule | Notices

(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

(b) A member or associated person fulfills the customer-specific suitability obligation for an institutional account, as defined in Rule 4512(c), if (1) the member or associated person has a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (2) the institutional customer affirmatively indicates that it is exercising independent judgment in evaluating the member's or associated person's recommendations. Where an institutional customer has delegated decisionmaking authority to an agent, such as an investment adviser or a bank trust department, these factors shall be applied to the agent.

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

.01 General Principles. Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

.02 Disclaimers. A member or associated person cannot disclaim any responsibilities under the suitability rule.

.03 Recommended Strategies. The phrase "investment strategy involving a security or securities" used in this Rule is to be interpreted broadly and would include, among other things, an explicit recommendation to hold a security or securities. However, the following communications are excluded from the coverage of Rule 2111 as long as they do not include (standing alone or in combination with other communications) a recommendation of a particular security or securities:

(a) General financial and investment information, including (i) basic investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment, (ii) historic differences in the return of asset classes (e.g., equities, bonds, or cash) based on standard market indices, (iii) effects of inflation, (iv) estimates of future retirement income needs, and (v) assessment of a customer's investment profile;

(b) Descriptive information about an employer-sponsored retirement or benefit plan, participation in the plan, the benefits of plan participation, and the investment options available under the plan;

(c) Asset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with Rule 2214 (Requirements for the Use of Investment Analysis Tools) if the asset allocation model is an "investment analysis tool" covered by Rule 2214; and

(d) Interactive investment materials that incorporate the above.

.04 Customer's Investment Profile. A member or associated person shall make a recommendation covered by this Rule only if, among other things, the member or associated person has sufficient information about the customer to have a reasonable basis to believe that the recommendation is suitable for that customer. The factors delineated in Rule 2111(a) regarding a customer's investment profile generally are relevant to a determination regarding whether a recommendation is suitable for a particular customer, although the level of importance of each factor may vary depending on the facts and circumstances of the particular case. A member or associated person shall use reasonable diligence to obtain and analyze all of the factors delineated in Rule 2111(a) unless the member or associated person has a reasonable basis to believe, documented with specificity, that one or more of the factors are not relevant components of a customer's investment profile in light of the facts and circumstances of the particular case.

.05 Components of Suitability Obligations. Rule 2111 is composed of three main obligations: reasonable-basis suitability, customer-specific suitability, and quantitative suitability.

(a) The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least *some* investors. In general, what constitutes reasonable diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. A member's or associated person's reasonable diligence must provide the member or associated person with an understanding of the potential risks and rewards associated with the recommended security or strategy. The lack of such an understanding when recommending a security or strategy violates the suitability rule.

(b) The customer-specific obligation requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile, as delineated in Rule 2111(a).

(c) Quantitative suitability requires a member or associated person to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

.06 Customer's Financial Ability. Rule 2111 prohibits a member or associated person from recommending a transaction or investment strategy involving a security or securities or the continuing purchase of a security or securities or use of an investment strategy involving a security or securities unless the member or associated person has a reasonable basis to believe that the customer has the financial ability to meet such a commitment.

.07 Institutional Investor Exemption. Rule 2111(b) provides an exemption to customer-specific suitability regarding institutional investors if the conditions delineated in that paragraph are satisfied. With respect to having to indicate affirmatively that it is exercising independent judgment in evaluating the member's or associated person's recommendations, an institutional customer may indicate that it is exercising independent judgment on a trade-by-trade basis, on an asset-class-by-asset-class basis, or in terms of all potential transactions for its account.

.08 Regulation Best Interest. This Rule shall not apply to recommendations subject to SEA Rule 15l-1 ("Regulation Best Interest").

Amended by SR-FINRA-2020-007 eff. June 30, 2020.
Amended by SR-FINRA-2014-016 eff. May 1, 2014.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Adopted by SR-FINRA-2010-039 and amended by SR-FINRA-2011-016 and SR-FINRA-2012-027 eff. July 9, 2012.

Selected Notices: 11-02, 11-25, 12-25, 12-55, 20-18.

2114. Recommendations to Customers in OTC Equity Securities

The Rule | Notices

Preliminary Note: The requirements of this Rule are in addition to other existing member obligations under FINRA rules and the federal securities laws, including obligations to determine suitability of particular securities transactions with customers and to have a reasonable basis for any recommendation made to a customer. This Rule is not intended to act or operate as a presumption or as a safe harbor for purposes of determining suitability or for any other legal obligation or requirement imposed under FINRA rules and the federal securities laws.

(a) Review Requirement

No member or person associated with a member shall recommend that a customer purchase or sell short any OTC Equity Security, unless the member has reviewed the current financial statements of the issuer, current material business information about the issuer, and made a determination that such information, and any other information available, provides a reasonable basis under the circumstances for making the recommendation.

(b) Definitions

(1) For purposes of this Rule, the term "current financial statements" shall include:

(A) For issuers that are not foreign private issuers,

(i) a balance sheet as of a date less than 15 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 6 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 6 months before the date of the recommendation;

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the SEC, foreign regulatory authorities, and bank and insurance regulators; and

(v) all publicly available financial information filed with the SEC during the 12 months preceding the date of the recommendation contained in registration statements or SEC Regulation A filings.

(B) For foreign private issuers,

(i) a balance sheet as of a date less than 18 months before the date of the recommendation;

(ii) a statement of profit and loss for the 12 months preceding the date of the balance sheet;

(iii) if the balance sheet is not as of a date less than 9 months before the date of the recommendation, additional statements of profit and loss for the period from the date of the balance sheet to a date less than 9 months before the date of the recommendation, if any such statements have been prepared by the issuer; and

(iv) publicly available financial statements and other financial reports filed during the 12 months preceding the date of the recommendation and up to the date of the recommendation with the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the SEC, foreign regulatory authorities, and bank and insurance regulators.

(2) For purposes of this Rule, the term "current material business information" shall include information that is ascertainable through the reasonable exercise of professional diligence and that a reasonable person would take into account in reaching an investment decision.

(3) For purposes of this Rule, the term "OTC Equity Security" shall have the meaning described in Rule 6420.

(c) Compliance Requirements

(1) A member shall designate a registered person to conduct the review required by this Rule. In making such designation, the member must ensure that:

(A) Either the person is registered as a General Securities Principal or General Securities Sales Supervisor, or the designated person's conduct in complying with the provisions of this Rule is appropriately supervised by a General Securities Principal or General Securities Sales Supervisor; and

(B) Such designated person has the requisite skills, background and knowledge to conduct the review required under this Rule.

(2) The member shall document the information reviewed, the date of the review, and the name of the person performing the review of the required information. In the event that the person designated to perform the review is not registered as a General Securities Principal or General Securities Sales Supervisor, the member shall also document the name of the General Securities Principal or General Securities Sales Supervisor who supervised the designated person.

(d) Additional Review Requirement for Delinquent Filers

If an issuer has not made current filings required by the issuer's principal financial or securities regulatory authority in its home jurisdiction, including the SEC, foreign regulatory authorities, or bank and insurance regulators, such review must include an inquiry into the circumstances concerning the failure to make current filings, and a determination, based on all the facts and circumstances, that the recommendation is appropriate under the circumstances. Such a determination must be made in writing and maintained by the member.

(e) Exemptions

(1) The requirements of this Rule shall not apply to:

(A) Transactions that meet the requirements of Rule 504 of SEC Regulation D and transactions with an issuer not involving any public offering pursuant to Section 4(2) of the Securities Act;

(B) Transactions with or for an account that qualifies as an "institutional account" under Rule 4512(c) or with a customer that is a "qualified institutional buyer" under Securities Act Rule 144A or "qualified purchaser" under Section 2(a)(51) of the Investment Company Act;

(C) Transactions in an issuer's securities if the issuer has at least $50 million in total assets and $10 million in shareholder's equity as stated in the issuer's most recent audited current financial statements, as defined in this Rule;

(D) Transactions in securities of a bank as defined in Section 3(a)(6) of the Exchange Act and/or insurance company subject to regulation by a state or federal bank or insurance regulatory authority; or

(E) A security that has a bid price, as published in a quotation medium, of at least $50 per share. If the security is a unit composed of one or more securities, the bid price of the unit divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be at least $50.

(2) Pursuant to the Rule 9600 Series, FINRA, for good cause shown after taking into consideration all relevant factors, may exempt any person, security or transaction, or any class

or classes of persons, securities or transactions, either unconditionally or on specified terms, from any or all of the requirements of this Rule if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.

Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2008-055 and SR-FINRA-2009-033 eff. June 15, 2009.
Adopted by SR-NASD-99-04 eff. Oct. 30, 2002.

Selected Notices: 02-66, 09-20.

2121. Fair Prices and Commissions

The Rule | Notices

In securities transactions, whether in "listed" or "unlisted" securities, if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

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

.01 **Mark-Up Policy**

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the National Association of Securities Dealers ("Association"). No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the "5% Policy" to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)(ii) of the By-Laws, the Board adopted the following interpretation.

It shall be deemed a violation of Rule 2010 and Rule 2121 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable.

(a) General Considerations

Since the adoption of the "5% Policy" the Board has determined that:

(1) The "5% Policy" is a guide, not a rule.

(2) A member may not justify mark-ups on the basis of expenses which are excessive.

(3) The mark-up over the prevailing market price is the significant spread from the point of view of fairness of dealings with customers in principal transactions. In the absence of other bona fide evidence of the prevailing market, a member's own contemporaneous cost is the best indication of the prevailing market price of a security.

(4) A mark-up pattern of 5% or even less may be considered unfair or unreasonable under the "5% Policy."

(5) Determination of the fairness of mark-ups must be based on a consideration of all the relevant factors, of which the percentage of mark-up is only one.

(b) Relevant Factors

Some of the factors which the Board believes that members and the Association's committees should take into consideration in determining the fairness of a mark-up are as follows:

(1) The Type of Security Involved

Some securities customarily carry a higher mark-up than others. For example, a higher percentage of mark-up customarily applies to a common stock transaction than to a bond transaction of the same size. Likewise, a higher percentage applies to sales of units of direct participation programs and condominium securities than to sales of common stock.

(2) The Availability of the Security in the Market

In the case of an inactive security the effort and cost of buying or selling the security, or any other unusual circumstances connected with its acquisition or sale, may have a bearing on the amount of mark-up justified.

(3) The Price of the Security

While there is no direct correlation, the percentage of mark-up or rate of commission generally increases as the price of the security decreases. Even where the amount of money is substantial, transactions in lower priced securities may require more handling and expense and may warrant a wider spread.

(4) The Amount of Money Involved in a Transaction

A transaction which involves a small amount of money may warrant a higher percentage of mark-up to cover the expenses of handling.

(5) Disclosure

Any disclosure to the customer, before the transaction is effected, of information which would indicate (A) the amount of commission charged in an agency transaction or (B) mark-up

made in a principal transaction is a factor to be considered. Disclosure itself, however, does not justify a commission or mark-up which is unfair or excessive in light of all other relevant circumstances.

(6) The Pattern of Mark-Ups

While each transaction must meet the test of fairness, the Board believes that particular attention should be given to the pattern of a member's mark-ups.

(7) The Nature of the Member's Business

The Board is aware of the differences in the services and facilities which are needed by, and provided for, customers of members. If not excessive, the cost of providing such services and facilities, particularly when they are of a continuing nature, may properly be considered in determining the fairness of a member's mark-ups.

(c) Transactions to Which the Policy is Applicable

The Policy applies to all securities, whether oil royalties or any other security, in the following types of transactions:

(1) A transaction in which a member buys a security to fill an order for the same security previously received from a customer. This transaction would include the so-called "riskless" or "simultaneous" transaction.

(2) A transaction in which the member sells a security to a customer from inventory. In such a case the amount of the mark-up would be determined on the basis of the mark-up over the bona fide representative current market. The amount of profit or loss to the member from market appreciation or depreciation before, or after, the date of the transaction with the customer would not ordinarily enter into the determination of the amount or fairness of the mark-up.

(3) A transaction in which a member purchases a security from a customer. The price paid to the customer or the mark-down applied by the member must be reasonably related to the prevailing market price of the security.

(4) A transaction in which the member acts as agent. In such a case, the commission charged the customer must be fair in light of all relevant circumstances.

(5) Transactions wherein a customer sells securities to, or through, a broker/dealer, the proceeds from which are utilized to pay for other securities purchased from, or through, the broker/dealer at or about the same time. In such instances, the mark-up shall be computed in the same way as if the customer had purchased for cash and in computing the mark-up there shall be included any profit or commission realized by the dealer on the securities being liquidated, the proceeds of which are used to pay for securities being purchased.

(d) Transactions to Which the Policy is Not Applicable

The Mark-Up Policy is not applicable to the sale of securities where a prospectus or offering circular is required to be delivered and the securities are sold at the specific public offering price.

.02 **Additional Mark-Up Policy For Transactions in Debt Securities, Except Municipal Securities**[1]

(a) Scope

Supplementary Material .01 to Rule 2121 applies to debt securities transactions, and this Supplementary Material .02 supplements the guidance provided in Supplementary Material .01.

(b) Prevailing Market Price

(1) A dealer that is acting in a principal capacity in a transaction with a customer and is charging a mark-up or mark-down must mark-up or mark-down the transaction from the prevailing market price. Presumptively for purposes of this Supplementary Material .02, the prevailing market price for a debt security is established by referring to the dealer's contemporaneous cost as incurred, or contemporaneous proceeds as obtained, consistent with FINRA pricing rules. (*See, e.g.,* Rule 5310).

(2) When the dealer is *selling* the security to a customer, countervailing evidence of the prevailing market price may be considered only where the dealer made no *contemporaneous purchases* in the security or can show that in the particular circumstances the dealer's *contemporaneous cost* is not indicative of the prevailing market price. When the dealer is *buying* the security from a customer, countervailing evidence of the prevailing market price may be considered only where the dealer made no *contemporaneous sales* in the security or can show that in the particular circumstances the dealer's *contemporaneous proceeds* are not indicative of the prevailing market price.

(3) A dealer's cost is considered contemporaneous if the transaction occurs close enough in time to the subject transaction that it would reasonably be expected to reflect the current market price for the security. (Where a mark-down is being calculated, a dealer's proceeds would be considered contemporaneous if the transaction from which the proceeds result occurs close enough in time to the subject transaction that such proceeds would reasonably be expected to reflect the current market price for the security.)

(4) A dealer that effects a transaction in debt securities with a customer and identifies the prevailing market price using a measure other than the dealer's own contemporaneous cost (or, in a mark-down, the dealer's own proceeds) must be prepared to provide evidence that is sufficient to overcome the presumption that the dealer's contemporaneous cost (or, the dealer's proceeds) provides the best measure of the prevailing market price. A dealer may be able to show that its contemporaneous cost is (or proceeds are) not indicative of prevailing market price,

and thus overcome the presumption, in instances where (i) interest rates changed after the dealer's contemporaneous transaction to a degree that such change would reasonably cause a change in debt securities pricing; (ii) the credit quality of the debt security changed significantly after the dealer's contemporaneous transaction; or (iii) news was issued or otherwise distributed and known to the marketplace that had an effect on the perceived value of the debt security after the dealer's contemporaneous transaction.

(5) In instances where the dealer has established that the dealer's cost is (or, in a mark-down, proceeds are) no longer contemporaneous, or where the dealer has presented evidence that is sufficient to overcome the presumption that the dealer's contemporaneous cost (or proceeds) provides the best measure of the prevailing market price, such as those instances described in (b)(4)(i), (ii) and (iii), a member must consider, in the order listed, the following types of pricing information to determine prevailing market price:

(A) Prices of any contemporaneous inter-dealer transactions in the security in question;

(B) In the absence of transactions described in (A), prices of contemporaneous dealer purchases (sales) in the security in question from (to) institutional accounts with which any dealer regularly effects transactions in the same security; or

(C) In the absence of transactions described in (A) and (B), for actively traded securities, contemporaneous bid (offer) quotations for the security in question made through an inter-dealer mechanism, through which transactions generally occur at the displayed quotations.

(A member may consider a succeeding category of pricing information only when the prior category does not generate relevant pricing information (e.g., a member may consider pricing information under (B) only after the member has determined, after applying (A), that there are no contemporaneous inter-dealer transactions in the same security).) In reviewing the pricing information available within each category, the relative weight, for purposes of identifying prevailing market price, of such information (*i.e.*, either a particular transaction price, or, in (C) above, a particular quotation) depends on the facts and circumstances of the comparison transaction or quotation (*i.e.*, such as whether the dealer in the comparison transaction was on the same side of the market as the dealer is in the subject transaction and timeliness of the information).

(6) In the event that, in particular circumstances, the above factors are not available, other factors that may be taken into consideration for the purpose of establishing the price from which a customer mark-up (mark-down) may be calculated, include but are not limited to:

- Prices of contemporaneous inter-dealer transactions in a "similar" security, as defined below, or prices of contemporaneous dealer purchase (sale) transactions in a "similar" security with institutional accounts with which any dealer regularly effects transactions in the "similar" security with respect to customer mark-ups (mark-downs);

- Yields calculated from prices of contemporaneous inter-dealer transactions in "similar" securities;

- Yields calculated from prices of contemporaneous dealer purchase (sale) transactions with institutional accounts with which any dealer regularly effects transactions in "similar" securities with respect to customer mark-ups (mark-downs); and

- Yields calculated from validated contemporaneous inter-dealer bid (offer) quotations in "similar" securities for customer mark-ups (mark-downs).

The relative weight, for purposes of identifying prevailing market price, of the pricing information obtained from the factors set forth above depends on the facts and circumstances surrounding the comparison transaction (*i.e.*, whether the dealer in the comparison transaction was on the same side of the market as the dealer is in the subject transaction, timeliness of the information, and, with respect to the final factor listed above, the relative spread of the quotations in the similar security to the quotations in the subject security).

(7) Finally, if information concerning the prevailing market price of the subject security cannot be obtained by applying any of the above factors, FINRA or its members may consider as a factor in assessing the prevailing market price of a debt security the prices or yields derived from economic models (*e.g.*, discounted cash flow models) that take into account measures such as credit quality, interest rates, industry sector, time to maturity, call provisions and any other embedded options, coupon rate, and face value; and consider all applicable pricing terms and conventions (*e.g.*, coupon frequency and accrual methods). Such models currently may be in use by bond dealers or may be specifically developed by regulators for surveillance purposes.

(8) Because the ultimate evidentiary issue is the prevailing market price, isolated transactions or isolated quotations generally will have little or no weight or relevance in establishing prevailing market price. For example, in considering yields of "similar" securities, except in extraordinary circumstances, members may not rely exclusively on isolated transactions or a limited number of transactions that are not fairly representative of the yields of transactions in "similar" securities taken as a whole.

(9) "Customer," for purposes of Rule 2121, Supplementary Material .01 to Rule 2121 and this Supplementary Material .02, shall not include a qualified institutional buyer ("QIB") as defined in Rule 144A under the Securities Act of 1933 that is purchasing or selling a non-investment grade debt security when the dealer has determined, after considering the factors set forth in Rule 2111(b), that the QIB has the capacity to evaluate independently the investment risk and in fact is exercising independent judgment in deciding to enter into the transaction. For purposes of Rule 2121, Supplementary Material .01 to Rule 2121 and this Supplementary Material .02, "non-investment grade debt security" means a debt security that: (i) if rated by only one nationally recognized statistical rating organization ("NRSRO"), is rated lower than one of the four highest generic rating categories; (ii) if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by any of the NRSROs; or (iii) if unrated, either was analyzed as a non-investment grade debt security by the dealer and the dealer retains credit evaluation documentation and demonstrates to FINRA (using credit evaluation or other demonstrable criteria) that the credit quality of the security is, in fact, equivalent to a non-investment grade debt security, or was initially offered and sold and continues to be offered and sold pursuant to an exemption from registration under the Securities Act of 1933.

(c) "Similar" Securities

(1) A "similar" security should be sufficiently similar to the subject security that it would serve as a reasonable alternative investment to the investor. At a minimum, the security or securities should be sufficiently similar that a market yield for the subject security can be fairly estimated from the yields of the "similar" security or securities. Where a security has several components, appropriate consideration may also be given to the prices or yields of the various components of the security.

(2) The degree to which a security is "similar," as that term is used in this Supplementary Material .02, to the subject security may be determined by factors that include but are not limited to the following:

(A) Credit quality considerations, such as whether the security is issued by the same or similar entity, bears the same or similar credit rating, or is supported by a similarly strong guarantee or collateral as the subject security (to the extent securities of other issuers are designated as "similar" securities, significant recent information of either issuer that is not yet incorporated in credit ratings should be considered (*e.g.*, changes to ratings outlooks));

(B) The extent to which the spread (*i.e.*, the spread over U.S. Treasury securities of a similar duration) at which the "similar" security trades is comparable to the spread at which the subject security trades;

(C) General structural characteristics and provisions of the issue, such as coupon, maturity, duration, complexity or uniqueness of the structure, callability, the likelihood that

the security will be called, tendered or exchanged, and other embedded options, as compared with the characteristics of the subject security; and

(D) Technical factors such as the size of the issue, the float and recent turnover of the issue, and legal restrictions on transferability as compared with the subject security.

(3) When a debt security's value and pricing is based substantially on, and is highly dependent on, the particular circumstances of the issuer, including creditworthiness and the ability and willingness of the issuer to meet the specific obligations of the security, in most cases other securities will not be sufficiently similar, and therefore, other securities may not be used to establish the prevailing market price.

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[1] The Interpretation does not apply to transactions in municipal securities. Single terms in parentheses within sentences, such as the terms "(sale)" and "(to)" in the phrase, "contemporaneous dealer purchase (sale) transactions with institutional accounts," refer to scenarios where a member is charging a customer a mark-down.

Amended by SR-FINRA-2014-023 eff. May 9, 2014.
Amended by SR-NASD-2006-005 eff. June 13, 2008.
Amended by SR-NASD-2003-141 eff. July 5, 2007.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Adopted eff. Oct. 31, 1943, see SEC Release No. 3574 (June 1, 1944) and SEC Release No. 3623 (Nov. 25, 1944).

Selected Notices to Members: 75-65, 89-20, 91-69, 92-16, 93-81, 94-62, 07-28, 08-36

2122. Charges for Services Performed

Charges, if any, for services performed, including, but not limited to, miscellaneous services such as collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services shall be reasonable and not unfairly discriminatory among customers.

Amended by SR-FINRA-2014-049 eff. Nov. 21, 2014.

2124. Net Transactions with Customers

The Rule | Notices

(a) Prior to executing a transaction for or with a customer on a "net" basis as defined in paragraph (e) below, a member must provide disclosure to and obtain consent from the customer as provided in this Rule.

(b) With respect to non-institutional customers, the member must obtain the customer's written consent on an order-by-order basis prior to executing a transaction for or with the customer on a "net" basis and such consent must evidence the customer's understanding of the terms and conditions of the order.

(c) With respect to institutional customers, a member must obtain the customer's consent prior to executing a transaction for or with the customer on a "net" basis in accordance with one of the following methods:

(1) a negative consent letter that clearly discloses to the institutional customer in writing the terms and conditions for handling the customer order(s) and provides the institutional customer with a meaningful opportunity to object to the execution of transactions on a net basis. If the customer does not object, then the member may reasonably conclude that the institutional customer has consented to the member trading on a "net" basis with the customer and the member may rely on such letter for all or a portion of the customer's orders (as instructed by the customer) pursuant to this Rule;

(2) oral disclosure to and consent from the customer on an order-by-order basis. Such oral disclosure and consent must clearly explain the terms and conditions for handling the customer order and provide the institutional customer with a meaningful opportunity to object to the execution of the transaction on a net basis. The member also must document, on an order-by-order basis, the customer's understanding of the terms and conditions of the order and the customer's consent; or

(3) written consent on an order-by-order basis prior to executing a transaction for or with the customer on a "net" basis and such consent must evidence the customer's understanding of the terms and conditions of the order.

(d) For those customers that have granted trading discretion to a fiduciary (e.g. an investment adviser), a member is permitted to obtain the consent required under this Rule from the fiduciary. If the fiduciary meets the definition of "institutional customer" in paragraph (e), the member may meet the disclosure and consent requirements under this Rule in the same manner permitted for institutional customers.

(e) For purposes of this Rule:

(1) "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under Rule 4512(c); and

(2) "net" transaction shall mean a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

(f) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with Rule 4511.

Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2009-036 eff. Dec. 14, 2009.
Adopted by SR-NASD-2004-135 eff. Oct. 2, 2006.

Selected Notices: 06-47, 09-60.

2130. Approval Procedures for Day-Trading Accounts

The Rule | Notices

(a) No member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer, unless, prior to opening the account, the member has furnished to the customer the risk disclosure statement set forth in Rule 2270 and has:

(1) approved the customer's account for a day-trading strategy in accordance with the procedures set forth in paragraph (b) and prepared a record setting forth the basis on which the member has approved the customer's account; or

(2) received from the customer a written agreement that the customer does not intend to use the account for the purpose of engaging in a day-trading strategy, except that the member may not rely on such agreement if the member knows that the customer intends to use the account for the purpose of engaging in a day-trading strategy.

(b) In order to approve a customer's account for a day-trading strategy, a member shall have reasonable grounds for believing that the day-trading strategy is appropriate for the customer. In making this determination, the member shall exercise reasonable diligence to ascertain the essential facts relative to the customer, including:

(1) Investment objectives;

(2) Investment and trading experience and knowledge (e.g., number of years, size, frequency and type of transactions);

(3) Financial situation, including: estimated annual income from all sources, estimated net worth (exclusive of family residence), and estimated liquid net worth (cash, securities, other);

(4) Tax status;

(5) Employment status (name of employer, self-employed or retired);

(6) Marital status and number of dependents; and

(7) Age.

(c) If a member that is promoting a day-trading strategy opens an account for a non-institutional customer in reliance on a written agreement from the customer pursuant to paragraph (a)(2) and, following the opening of the account, knows that the customer is using the account for a day-trading

strategy, then the member shall be required to approve the customer's account for a day-trading strategy in accordance with paragraph (a)(1) as soon as practicable, but in no event later than 10 days following the date that such member knows that the customer is using the account for such a strategy.

(d) Any record or written statement prepared or obtained by a member pursuant to this Rule shall be preserved in accordance with Rule 4511.

(e) For purposes of this Rule, the following terms shall have the meanings specified below:

(1) "Day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

(2) "Non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 4512(c).

▪ ▪ ▪ Supplementary Material: ----------

.01 Promoting a Day-Trading Strategy.

(a) A member shall be deemed to be "promoting a day-trading strategy" if it affirmatively endorses a "day-trading strategy," as defined in paragraph (e) of this Rule, through advertising, its Web site, trading seminars or direct outreach programs. For example, a member generally shall be deemed to be "promoting a day-trading strategy" if its retail communications address the benefits of day trading, rapid-fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader. A member also shall be deemed to be "promoting a day-trading strategy" if it promotes its day-trading services through a third party. Moreover, the fact that many of a member's customers are engaging in a day-trading strategy will be relevant in determining whether a member has promoted itself in this way.

(b) A member shall not be deemed to be "promoting a day-trading strategy" solely by its engaging in the following activities: (1) promoting efficient execution services or lower execution costs based on multiple trades; (2) providing general investment research or advertising the high quality or prompt availability of such general research; and (3) having a Web site that provides general financial information or news or that allows the multiple entry of intra-day purchases and sales of the same securities.

.02 Review by FINRA's Advertising Regulation **Department.** A member may submit its retail communications to FINRA's Advertising Regulation Department for review and guidance on whether the content of the retail communications constitutes "promoting a day-trading strategy" for purposes of this Rule.

.03 Additional Rules Regarding Day Trading. Members should be aware that, in addition to general rules that may apply, FINRA has additional rules that specifically address day trading. See, e.g., Rule 2270 (Day-Trading Risk Disclosure Statement); Rule 4210(f)(8)(B) (Margin Requirements) regarding special margin requirements for day trading.

Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-059 eff. Feb. 15, 2010.
Adopted by SR-NASD-99-41 eff. Oct. 16, 2000.

Selected Notices: 00-62, 09-72.

2140. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

The Rule | Notices

No member or person associated with a member shall interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative where the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this Rule shall affect the operation of Rule 11870.

Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2008-052 eff. June 15, 2009.
Adopted by SR-NASD-2001-095 eff. Dec. 21, 2001.

Selected Notices: 02-07, 09-20.

2150. Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts

The Rule | Notices

(a) Improper Use

No member or person associated with a member shall make improper use of a customer's securities or funds.

(b) Prohibition Against Guarantees

No member or person associated with a member shall guarantee a customer against loss in connection with any securities transaction or in any securities account of such customer.

(c) Sharing in Accounts; Extent Permissible

(1)(A) Except as provided in paragraph (c)(2), no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if:

(i) such person associated with a member obtains prior written authorization from the member employing the associated person;

(ii) such member or person associated with a member obtains prior written authorization from the customer; and

(iii) such member or person associated with a member shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of paragraph (c)(1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (c)(1), a member or person associated with a member that is acting as an investment adviser may receive compensation based on a share in profits or gains in an account if:

(A) such person associated with a member seeking such compensation obtains prior written authorization from the member employing the associated person;

(B) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act (as the same may be amended from time to time) are satisfied.

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

.01 Inapplicability of Rule to Certain Guarantees. For purposes of paragraph (b) of this Rule, a "guarantee" that is extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees.

.02 Permissible Reimbursement by Member of Certain Losses. Nothing in this Rule shall preclude a member, but not an associated person of the member, from determining on an after-the-fact basis, to reimburse a customer for transaction losses; provided, however, that the member shall comply with all reporting requirements that may be applicable to such payment. For example, if the payment can reasonably be construed as a settlement, the member shall report the payment as a settlement under the applicable reporting requirement(s). In addition, nothing in this Rule shall preclude a member, but not an associated person of the member, from correcting a bona fide error. This Supplementary Material .02 does not apply to an associated person of a member because of the concern that any such payment may conceal individual misconduct.

.03 Record Retention. For purposes of paragraph (c) of this Rule, members shall preserve the required written authorization(s) for at least six years after the date the account is closed.

.04 Applicability of Other Rules to Sharing Arrangements. Members and associated persons should be aware that participation in a sharing arrangement permitted under paragraph (c) of this Rule does not affect the applicability of other FINRA rules, including paragraph (b) of this Rule, FINRA Rules 3210, 3270 and 3280 to such sharing arrangement.

Amended by SR-FINRA-2017-004 eff. April 3, 2017.
Amended by SR-FINRA-2015-030 eff. Sept. 21, 2015.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-014 eff. Dec. 14, 2009.
Amended by SR-NASD-2002-180 eff. May 12, 2003.
Amended by SR-NASD-99-42 eff. April 21, 2001.
Amended by SR-NASD-87-9 eff. May 23, 1988.

Amended by SR-NASD-84-33 eff. Feb. 7, 1985.

Selected Notices: 83-74, 86-74, 88-55, 01-24, 03-21, 09-60.

2165. Financial Exploitation of Specified Adults

The Rule | Notices

(a) Definitions

(1) For purposes of this Rule, the term "Specified Adult" shall mean: (A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

(2) For purposes of this Rule, the term "Account" shall mean any account of a member for which a Specified Adult has the authority to transact business.

(3) For purposes of this Rule, the term "Trusted Contact Person" shall mean the person who may be contacted about the Specified Adult's Account in accordance with Rule 4512.

(4) For purposes of this Rule, the term "financial exploitation" means:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or

(B) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a Specified Adult, to:

(i) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or

(ii) convert the Specified Adult's money, assets or property.

(b) Temporary Hold on Disbursements or Transactions

(1) A member may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult or a transaction in securities in the Account of a Specified Adult if:

(A) The member reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) The member, not later than two business days after the date that the member first placed the temporary hold on the disbursement of funds or securities or the transaction in securities, provides notification orally or in writing, which may be electronic, of the temporary hold and the reason for the temporary hold to:

(i) all parties authorized to transact business on the Account, unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(C) The member immediately initiates an internal review of the facts and circumstances that caused the member to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.

(2) The temporary hold authorized by this Rule will expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities or the transaction in securities, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(3) of this Rule.

(3) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted, the temporary hold authorized by this Rule may be extended by the member for no longer than 10 business days following the date authorized by paragraph (b)(2) of this Rule, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(4) of this Rule.

(4) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted and the member has reported or provided notification of the member's reasonable belief to a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, the temporary hold authorized by this Rule may be extended by the member for no longer than 30 business days following the date authorized by paragraph (b)(3) of this Rule, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

(c) Supervision

(1) In addition to the general supervisory and recordkeeping requirements of Rules 3110, 3120, 3130, 3150, and Rule 4510 Series, a member relying on this Rule shall establish and maintain written supervisory procedures reasonably designed to achieve

compliance with this Rule, including, but not limited to, procedures related to the identification, escalation and reporting of matters related to the financial exploitation of Specified Adults.

(2) A member's written supervisory procedures also shall identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to this Rule. Any such person shall be an associated person of the member who serves in a supervisory, compliance or legal capacity for the member.

(d) Record Retention

Members shall retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request. The retained records shall include records of: (1) request(s) for disbursement or transaction that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement or transaction; (3) the name and title of the associated person that authorized the temporary hold on a disbursement or transaction; (4) notification(s) to the relevant parties pursuant to paragraph (b)(1)(B) of this Rule; (5) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule; and (6) the reason and support for any extension of a temporary hold, including information regarding any communications with or by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

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

.01 Applicability of Rule. This Rule provides members and their associated persons with a safe harbor from FINRA Rules 2010, 2150 and 11870 when members exercise discretion in placing temporary holds on disbursements of funds or securities from the Accounts of Specified Adults or transactions in securities in the Accounts of Specified Adults consistent with the requirements of this Rule. This Rule does not require members to place temporary holds on disbursements of funds or securities from the Accounts of Specified Adults or transactions in securities in the Accounts of Specified Adults.

.02 Training. A member relying on this Rule must develop and document training policies or programs reasonably designed to ensure that associated persons comply with the requirements of this Rule.

.03 Reasonable Belief of Mental or Physical Impairment. A member's reasonable belief that a natural person age 18 and older has a mental or physical impairment that renders the individual unable to protect his or her own interests may be based on the facts and circumstances observed in the member's business relationship with the natural person.

Amended by SR-FINRA-2021-016 eff. March 17, 2022.
Adopted by SR-FINRA-2016-039 eff. Feb. 5, 2018.

Selected Notice: 17-11, 22-05.

2210. Communications with the Public

The Rule | Notices

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) "Communications" consist of correspondence, retail communications and institutional communications.

(2) "Correspondence" means any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

(3) "Institutional communication" means any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member's internal communications.

(4) "Institutional investor" means any:

(A) person described in Rule 4512(c), regardless of whether the person has an account with a member;

(B) governmental entity or subdivision thereof;

(C) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans;

(D) qualified plan, as defined in Section 3(a)(12)(C) of the Exchange Act, or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans;

(E) member or registered person of such a member; and

(F) person acting solely on behalf of any such institutional investor.

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any retail investor.

(5) "Retail communication" means any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period.

(6) "Retail investor" means any person other than an institutional investor, regardless of whether the person has an account with a member.

(7) "Covered investment fund research report" has the meaning given that term in paragraph (c)(3) of Securities Act Rule 139b.

(b) Approval, Review and Recordkeeping

(1) Retail Communications

(A) An appropriately qualified registered principal of the member must approve each retail communication before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").

(B) The requirements of paragraph (b)(1)(A) may be met by a Supervisory Analyst approved pursuant to Rule 1220(a)(14) with respect to: (i) research reports on debt and equity securities as described in Rules 2241(a)(11) and 2242(a)(3); (ii) retail communications as described in Rules 2241(a)(11)(A) and 2242(a)(3)(A); and (iii) other research communications, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration.

(C) The requirements of paragraph (b)(1)(A) shall not apply with regard to any retail communication if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this subparagraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(D) The requirements of paragraph (b)(1)(A) shall not apply with regard to the following retail communications, provided that the member supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rules 3110(b) and 3110.06 through .09:

(i) any retail communication that is excepted from the definition of "research report" pursuant to Rule 2241(a)(11)(A) or "debt research report" under Rule 2242(a)(3)(A), unless the communication makes any financial or investment recommendation;

(ii) any retail communication that is posted on an online interactive electronic forum; and

(iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member.

(E) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(F) Notwithstanding any other provision of this Rule, an appropriately qualified principal must approve a communication prior to a member filing the communication with the Department.

(2) Correspondence

All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

(3) Institutional Communications

Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) Recordkeeping

(A) Members must maintain all retail communications and institutional communications for the retention period required by SEA Rule 17a-4(b) and in a format and media that comply with SEA Rule 17a-4. The records must include:

(i) a copy of the communication and the dates of first and (if applicable) last use of such communication;

(ii) the name of any registered principal who approved the communication and the date that approval was given;

(iii) in the case of a retail communication or an institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;

(iv) information concerning the source of any statistical table, chart, graph or other illustration used in the communication;

(v) for any retail communication for which principal approval is not required pursuant to paragraph (b)(1)(C), the name of the member that filed the retail communication with the Department, and a copy of the corresponding review letter from the Department; and

(vi) for any retail communication that includes or incorporates a performance ranking or performance comparison of a registered investment company, a copy of the ranking or performance used in the retail communication.

(B) Members must maintain all correspondence in accordance with the record-keeping requirements of Rules 3110.09 and 4511.

(c) Filing Requirements and Review Procedures

(1) Requirement for Certain Members to File Retail Communications Prior to First Use

(A) For a period of one year beginning on the date reflected in the Central Registration Depository (CRD®) system as the date that FINRA membership became effective, the member must file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible website, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). To the extent any retail communication that is subject to this filing requirement is a free writing prospectus that has been filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii), the member may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

(B) Notwithstanding the foregoing provisions, if the Department determines that a member has departed from the standards of this Rule, it may require that such member file all communications, or the portion of such member's communications that is related to any specific types or classes of securities or services, with the Department at least 10 business

days prior to first use. The Department will notify the member in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this subparagraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(2) Requirement to File Certain Retail Communications Prior to First Use

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following retail communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A) Retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Retail communications concerning security futures. The requirements of this paragraph (c)(2)(B) shall not be applicable to:

(i) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications; and

(ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(3) Requirement to File Certain Retail Communications

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A) Retail communications that promote or recommend a specific registered investment company or family of registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) not included within the requirements of paragraphs(c)(1) or (c)(2).

(B) Retail communications concerning public direct participation programs (as defined in Rule 2310).

(C) Retail communications concerning collateralized mortgage obligations registered under the Securities Act.

(D) Retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (C) of paragraph (c)(3).

(4) Filing of Television or Video Retail Communications

If a member has filed a draft version or "story board" of a television or video retail communication pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(5) Date of First Use and Approval Information

A member must provide with each filing the actual or anticipated date of first use, the name, title and Central Registration Depository (CRD®) number of the registered principal who approved the retail communication, and the date that the approval was given.

(6) Spot-Check Procedures

In addition to the foregoing requirements, each member's written (including electronic) communications may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(7) Exclusions from Filing Requirements

The following communications are excluded from the filing requirements of paragraphs (c)(1) through (c)(4):

(A) Retail communications that previously have been filed with the Department and that are to be used without material change.

(B) Retail communications that are based on templates that were previously filed with the Department the changes to which are limited to:

(i) updates of more recent statistical or other non-narrative information; and

(ii) non-predictive narrative information that describes market events during the period covered by the communication or factual changes in portfolio composition or is sourced from a registered investment company's regulatory documents filed with the SEC.

(C) Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member.

(D) Retail communications that do no more than identify a national securities exchange symbol of the member or identify a security for which the member is a registered market maker.

(E) Retail communications that do no more than identify the member or offer a specific security at a stated price.

(F) Prospectuses, preliminary prospectuses, fund profiles, offering circulars, annual or semi-annual reports and similar documents that have been filed with the SEC or any state in compliance with applicable requirements, similar offering documents concerning securities offerings that are exempt from SEC and state registration requirements, and free writing prospectuses that are exempt from filing with the SEC, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii) will not be considered a prospectus for purposes of this exclusion.

(G) Retail communications prepared in accordance with Section 2(a)(10)(b) of the Securities Act, as amended, or any rule thereunder, such as Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the retail communications are related to publicly offered direct participation programs or securities issued by registered investment companies.

(H) Press releases that are made available only to members of the media.

(I) Any reprint or excerpt of any article or report issued by a publisher ("reprint"), provided that:

(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member is promoting;

(ii) neither the member using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and

(iii) the member using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

(J) Correspondence.

(K) Institutional communications.

(L) Communications that refer to types of investments solely as part of a listing of products or services offered by the member.

(M) Retail communications that are posted on an online interactive electronic forum.

(N) Press releases issued by closed-end investment companies that are listed on the New York Stock Exchange (NYSE) pursuant to section 202.06 of the NYSE Listed Company Manual (or any successor provision).

(O) Research reports as defined in Rule 2241 that concern only securities that are listed on a national securities exchange, other than research reports required to be filed with the Commission pursuant to Section 24(b) of the Investment Company Act.

(P) Any covered investment fund research report that is deemed for the purposes of sections 2(a)(10) and 5(c) of the Securities Act not to constitute an offer for sale or offer to sell a security under Securities Act Rule 139b.

(8) Communications Deemed Filed with FINRA

Although the communications described in paragraphs (c)(7)(H) through (K) are excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act and Rule 24b-3 thereunder.

(9) Filing Exemptions

(A) Pursuant to the Rule 9600 Series, FINRA may exempt a member from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown.

(B) Pursuant to the Rule 9600 Series, FINRA may conditionally or unconditionally grant an exemption from paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

(d) Content Standards

(1) General Standards

(A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Members must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. Communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(E) Members must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience.

(F) Communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, that this paragraph (d)(1)(F) does not prohibit:

(i) A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy;

(ii) An investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of Rule 2214; and

(iii) A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

(2) Comparisons

Any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(3) Disclosure of Member's Name

All retail communications and correspondence must:

(A) prominently disclose the name of the member, or the name under which the member's broker-dealer business primarily is conducted as disclosed on the member's Form BD, and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) reflect any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (d)(3) does not apply to so-called "blind" advertisements used to recruit personnel.

(4) Tax Considerations

(A) In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes. If income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(B) Communications may not characterize income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(C) A comparative illustration of the mathematical principles of tax-deferred versus taxable compounding must meet the following requirements:

(i) The illustration must depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum.

(ii) The illustration must use and identify actual federal income tax rates.

(iii) The illustration may reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state.

(iv) Tax rates used in an illustration that is intended for a target audience must reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income.

(v) If the illustration covers the payout period for an investment, the illustration must reflect the impact of taxes during this period.

(vi) The illustration may not assume an unreasonable period of tax deferral.

(vii) The illustration must disclose, as applicable:

a. the degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;

b. the possible effects of investment losses on the relative advantage of the taxable versus the tax-deferred investments;

c. the extent to which tax rates on capital gains and dividends would affect the taxable investment's return;

d. the fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;

e. its underlying assumptions;

f. the potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and

g. that an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

(5) Disclosure of Fees, Expenses and Standardized Performance

(A) Retail communications and correspondence that present non-money market fund open-end management investment company performance data as permitted by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act must disclose:

(i) the standardized performance information mandated by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of distribution or submission for publication of a communication; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (d)(5)(A)(ii)(a).

(B) All of the information required by paragraph (d)(5)(A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Securities Act Rule 482 and Rule 34b-1 under the Investment Company Act.

(6) Testimonials

(A) If any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(B) Retail communications or correspondence providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other customers.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial.

(7) Recommendations

(A) Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following:

(i) that at the time the communication was published or distributed, the member was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) that the member or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of

any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(iii) that the member was manager or co-manager of a public offering of any securities of the issuer whose securities are recommended within the past 12 months.

(B) A member must provide, or offer to furnish upon request, available investment information supporting the recommendation. When a member recommends a corporate equity security, the member must provide the price at the time the recommendation is made.

(C) A retail communication or correspondence may not refer, directly or indirectly, to past specific recommendations of the member that were or would have been profitable to any person; provided, however, that a retail communication or correspondence may set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member within the immediately preceding period of not less than one year, if the communication or list:

(i) states the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

(ii) contains the following cautionary legend, which must appear prominently within the communication or list: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."

(D)(i) This paragraph (d)(7) does not apply to any communication that meets the definition of "research report" for purposes of Rule 2241 or that meets the definition of "debt research report" for purposes of Rule 2242, and includes all of the disclosures required by Rule 2241 or 2242, as applicable.

(ii) Paragraphs (d)(7)(A) and (d)(7)(C) do not apply to any communication that recommends only registered investment companies or variable insurance products; provided, however, that such communications must have a reasonable basis for the recommendation.

(8) BrokerCheck

(A) Each of a member's websites must include a readily apparent reference and hyperlink to BrokerCheck on:

(i) the initial webpage that the member intends to be viewed by retail investors; and

(ii) any other webpage that includes a professional profile of one or more registered persons who conduct business with retail investors.

(B) The requirements of subparagraph (A) shall not apply to:

(i) a member that does not provide products or services to retail investors; and

(ii) a directory or list of registered persons limited to names and contact information.

(9) Prospectuses Filed with the SEC

Prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the SEC and free writing prospectuses that are exempt from filing with the SEC are not subject to the standards of this paragraph (d); provided, however, that the standards of this paragraph (d) shall apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that is required to be filed with the SEC pursuant to Securities Act Rule 433(d)(1)(ii).

(e) Limitations on Use of FINRA's Name and Any Other Corporate Name Owned by FINRA

Members may indicate FINRA membership in conformity with Article XV, Section 2 of the FINRA By-Laws in one or more of the following ways:

(1) in any communication that complies with the applicable standards of this Rule and neither states nor implies that FINRA, or any other corporate name or facility owned by FINRA, or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security, and provided further that any reference to the Department's review of a communication is limited to either "Reviewed by FINRA" or "FINRA Reviewed";

(2) in a confirmation statement for an over-the-counter transaction that states: "This transaction has been executed in conformity with the FINRA Uniform Practice Code"; and

(3) on a member's website, provided that the member provides a hyperlink to FINRA's internet home page, www.finra.org, in close proximity to the member's indication of FINRA membership. A member is not required to provide more than one such hyperlink on its website. If the member's website contains more than one indication of FINRA membership, the member may elect to provide any one hyperlink in close proximity to any reference reasonably designed to draw the public's attention to FINRA membership. This provision also shall apply to an internet

website relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

(f) Public Appearances

(1) When sponsoring or participating in a seminar, forum, radio or television interview, or when otherwise engaged in public appearances or speaking activities that are unscripted and do not constitute retail communications, institutional communications or correspondence ("public appearance"), persons associated with members must follow the standards of paragraph (d)(1).

(2) If an associated person recommends a security in a public appearance, the associated person must have a reasonable basis for the recommendation. The associated person also must disclose, as applicable:

(A) that the associated person has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and

(B) any other actual, material conflict of interest of the associated person or member of which the associated person knows or has reason to know at the time of the public appearance.

(3) Each member shall establish written procedures that are appropriate to its business, size, structure, and customers to supervise its associated persons' public appearances. Such procedures must provide for the education and training of associated persons who make public appearances as to the firm's procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

(4) Any scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of this Rule, and members must comply with all applicable provisions of this Rule based on those communications' audience, content and use.

(5) Paragraph (f)(2) does not apply to any public appearance by a research analyst for purposes of Rule 2241 or by a debt research analyst for purposes of Rule 2242 that includes all of the disclosures required by Rule 2241 or 2242, as applicable. Paragraph (f)(2) also does not apply to a recommendation of investment company securities or variable insurance products; provided, however, that the associated person must have a reasonable basis for the recommendation.

(g) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications will be deemed a violation of this Rule 2210.

Amended by SR-FINRA-2019-017 eff. Aug. 16, 2019.
Amended by SR-FINRA-2019-009 eff. May 8, 2019.
Amended by SR-FINRA-2016-018 eff. Jan. 9, 2017.
Amended by SR-FINRA-2016-021 eff. July 16, 2016.
Amended by SR-FINRA-2015-022 eff. June 6, 2016.
Amended by SR-FINRA-2015-050. eff. Dec. 24, 2015.
Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2014-012 eff. July 11, 2014.
Amended by SR-FINRA-2011-035 and SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2008-044 eff. Feb. 5, 2009.
Amended by SR-FINRA-2007-020 eff. March 26, 2008.
Amended by SR-FINRA-2007-014 eff. Nov. 17, 2007.
Amended by SR-NASD-2006-073 eff. July 7, 2007.
Amended by SR-NASD-2007-042 eff. June 27, 2007 (Implementation date of IM-2210-4 (3) is Oct 31, 2007).
Amended by SR-NASD-2004-043 eff. April 1, 2007.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2004-123 eff. Aug. 10, 2004.
Amended by SR-NASD-2003-110 eff. June 28, 2004.
Amended by SR-NASD-2000-12 and SR-NASD-2003-94 eff. Nov. 3, 2003.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-98-32 eff. April 1, 2000.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.
Amended by SR-NASD-98-29 eff. Nov. 16, 1998.
Amended by SR-NASD-98-28 eff. July 15, 1998.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-97-33 eff. May 9, 1997.
Amended by SR-NASD-95-39 eff. Aug. 20, 1996.
Amended by SR-NASD-95-12 eff. Aug. 9, 1995.
Amended by SR-NASD-93-66 eff. Mar. 17, 1994.
Amended by SR-NASD-92-53 eff. July 1, 1993.
Amended eff. Aug. 2, 1983; June 5, 1987; July 1, 1988; Nov. 28, 1988; June 26, 1990; Mar. 27, 1991; Sept. 13, 1991; Nov. 16, 1992.

Selected Notices: 98-83, 99-16, 00-15, 00-22, 03-38, 04-36, 04-64, 06-48, 07-02, 07-47, 09-10, 12-29, 14-30, 15-50, 16-41, 19-32.

2211. Communications with the Public About Variable Life Insurance and Variable Annuities

The Rule | Notices

The standards governing communications with the public are set forth in Rule 2210. In addition to those standards, the following guidelines must be considered in preparing retail communications and correspondence, as defined in Rule 2210, about variable life insurance and variable annuities.

(a) General Considerations

(1) Product Identification

In order to assure that investors understand exactly what security is being discussed, retail communications and correspondence must clearly describe the product as either a variable life insurance policy or a variable annuity, as applicable. Member firms may use proprietary names in addition to this description. In cases where the proprietary name includes a description of the type of security being offered, there is no requirement to include a generalized description. For example, if the material includes a name such as the "XYZ Variable Life Insurance Policy," it is not necessary to include a statement indicating that the security is a variable life insurance policy. Considering the significant differences between mutual funds and variable products, the presentation must not represent or imply that the product being offered or its underlying account is a mutual fund.

(2) Liquidity

Considering that variable life insurance and variable annuities frequently involve substantial charges and/or tax penalties for early withdrawals, there must be no representation or implication that these are short-term, liquid investments. Presentations regarding liquidity or ease of access to investment values must be balanced by clear language describing the negative impact of early redemptions. Examples of this negative impact may be the payment of contingent deferred sales loads and tax penalties, and the fact that the investor may receive less than the original invested amount. With respect to variable life insurance, discussions of loans and withdrawals must explain their impact on cash values and death benefits.

(3) Claims About Guarantees

Insurance companies issuing variable life insurance and variable annuities provide a number of specific guarantees. For example, an insurance company may guarantee a minimum death benefit for a variable life insurance policy or the company may guarantee a schedule of payments to a variable annuity owner. Variable life insurance policies and variable annuities may

also offer a fixed investment account which is guaranteed by the insurance company. The relative safety resulting from such a guarantee must not be overemphasized or exaggerated as it depends on the claims-paying ability of the issuing insurance company. There must be no representation or implication that a guarantee applies to the investment return or principal value of the separate account. Similarly, it must not be represented or implied that an insurance company's financial ratings apply to the separate account.

(b) Specific Considerations

(1) Fund Performance Predating Inclusion in the Variable Product

In order to show how an existing fund would have performed had it been an investment option within a variable life insurance policy or variable annuity, retail communications and correspondence may contain the fund's historical performance that predates its inclusion in the policy or annuity. Such performance may only be used provided that no significant changes occurred to the fund at the time or after it became part of the variable product.
However, retail communications and correspondence may not include the performance of an existing fund for the purposes of promoting investment in a similar, but new, investment option (i.e., clone fund or model fund) available in a variable contract. The presentation of historical performance must conform to applicable FINRA and SEC standards. Particular attention must be given to including all elements of return and deducting applicable charges and expenses.

(2) Product Comparisons

A comparison of investment products may be used provided the comparison complies with applicable requirements set forth under Rule 2210. Particular attention must be paid to the specific standards regarding "comparisons" set forth in Rule 2210(d)(2).

(3) Use of Rankings

A ranking which reflects the relative performance of the separate account or the underlying investment option may be included in retail communications provided its use is consistent with the standards contained in Rule 2212.

(4) Discussions Regarding Insurance and Investment Features of Variable Life Insurance

Retail communications and correspondence on behalf of single premium variable life insurance may emphasize the investment features of the product provided an adequate explanation of the life insurance features is given. Such communications for other types of variable life insurance must provide a balanced discussion of these features.

(5) Hypothetical Illustrations of Rates of Return in Variable Life Insurance Retail Communications and Correspondence

(A)(i) Hypothetical illustrations using assumed rates of return may be used to demonstrate the way a variable life insurance policy operates. The illustrations show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. These illustrations may not be used to project or predict investment results as such forecasts are strictly prohibited by the Rules. The methodology and format of hypothetical illustrations must be modeled after the required illustrations in the prospectus.

(ii) An illustration may use any combination of assumed investment returns up to and including a gross rate of 12%, provided that one of the returns is a 0% gross rate. Although the maximum assumed rate of 12% may be acceptable, members are urged to assure that the maximum rate illustrated is reasonable considering market conditions and the available investment options. The purpose of the required 0% rate of return is to demonstrate how a lack of growth in the underlying investment accounts may affect policy values and to reinforce the hypothetical nature of the illustration.

(iii) The illustrations must reflect the maximum (guaranteed) mortality and expense charges associated with the policy for each assumed rate of return. Current charges may be illustrated in addition to the maximum charges.

(iv) Preceding any illustration there must be a prominent explanation that the purpose of the illustration is to show how the performance of the underlying investment accounts could affect the policy cash value and death benefit. The explanation must also state that the illustration is hypothetical and may not be used to project or predict investment results.

(B) In retail communications and correspondence which include hypothetical illustrations, member firms may provide a personalized illustration which reflects factors relating to the individual customer's circumstances. A personalized illustration may not contain a rate of return greater than 12% and must follow all of the standards set forth in subparagraph (A), above.

(C) In general, it is inappropriate to compare a variable life insurance policy with another product based on hypothetical performance as this type of presentation goes beyond the singular purpose of illustrating how the performance of the underlying investment accounts could affect the policy cash value and death benefit. It is permissible, however, to use a hypothetical illustration in order to compare a variable life insurance policy to a term policy with the difference in cost invested in a side product. The sole purpose of this type of illustration would be to demonstrate the concept of tax-deferred growth as a result of investing in the variable product. The following conditions must be met in order to make this type of comparison balanced and complete:

(i) the comparative illustration must be accompanied by an illustration which reflects the standards outlined in subparagraph (A), above;

(ii) the rate of return used in the comparative illustration must be no greater than 12%;

(iii) the rate of return assumed for the side product and the variable life policy must be the same;

(iv) the same fees deducted from the required prospectus illustration must be deducted from the comparative illustration;

(v) the side product must be illustrated using gross values which do not reflect the deduction of any fees; and,

(vi) the side product must not be identified or characterized as any specific investment or investment type.

Amended by SR-FINRA-2016-036 eff. Sep. 30, 2016.
Amended by SR-NASD-2004-176 eff. Jan. 1, 2005.
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.
Adopted by SR-NASD-94-02 eff. Mar. 21, 1994.

Selected Notice: 03-38.

2212. Use of Investment Companies Rankings in Retail Communications

The Rule | Notices

(a) Definition of "Ranking Entity"

For purposes of this Rule, the term "Ranking Entity" refers to any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.

(b) General Prohibition

Members may not use investment company rankings in any retail communication other than (1) rankings created and published by Ranking Entities or (2) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in retail communications also must conform to the following requirements.

(c) Required Disclosures

(1) Headlines/Prominent Statements

A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category.

(2) Required Prominent Disclosure

All retail communications containing an investment company ranking must disclose prominently:

(A) the name of the category (e.g., growth);

(B) the number of investment companies or, if applicable, investment company families, in the category;

(C) the name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;

(D) the length of the period (or the first day of the period) and its ending date; and

(E) criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

(3) Other Required Disclosure

All retail communications containing an investment company ranking also must disclose:

(A) the fact that past performance is no guarantee of future results;

(B) for investment companies that assess front-end sales loads, whether the ranking takes those loads into account;

(C) if the ranking is based on total return or the current SEC standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;

(D) the publisher of the ranking data (e.g., "ABC Magazine, June 2011"); and

(E) if the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

(d) Time Periods

(1) Current Rankings

Any investment company ranking included in a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member may only use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used.

(2) Rankings Time Periods; Use of Yield Rankings

Except for money market mutual funds:

(A) retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;

(B) an investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in

existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and

(C) an investment company ranking based on yield may be based only on the current SEC standardized yield and must be accompanied by total return rankings for the time periods specified in paragraph (d)(2)(B).

(e) Categories

(1) The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company.

(2) An investment company ranking must be based only on (A) a published category or subcategory created by a Ranking Entity or (B) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity.

(3) Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

(f) Multiple Class/Two-Tier Funds

Investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

(g) Investment Company Families

Retail communications may contain rankings of investment company families, provided that these rankings comply with this Rule, and further provided that no retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in paragraph (d)(2)(B). For purposes of this Rule, the term "investment company family" means any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

(h) Independently Prepared Reprints

This Rule shall not apply to any reprint or excerpt of any article or report that is excluded from the FINRA Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I).

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.
Amended by SR-NASD-96-39 eff. Mar. 5, 1997.
Adopted by SR-NASD-93-69 eff. July 12, 1994.

Selected Notices: 86-41, 92-59, 93-18, 93-73, 93-76, 93-85, 93-87, 94-16, 94-25, 94-36, 94-60, 95-49, 95-74, 95-80, 12-29.

2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings

The Rule | Notices

(a) Definition of Bond Mutual Fund Volatility Ratings

For purposes of this Rule and any interpretation thereof, the term "bond mutual fund volatility rating" is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

(b) Prohibitions on Use

Members and persons associated with a member may distribute a retail communication that includes a bond mutual fund volatility rating only when the following requirements are satisfied:

(1) The rating does not identify or describe volatility as a "risk" rating.

(2) The retail communication incorporates the most recently available rating and reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the disclosure that accompanies the rating must be clear, concise, and understandable.

(4) The retail communication conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a website, or both.

(c) Disclosure Requirements

(1) The following disclosures shall be provided with respect to each bond mutual fund volatility rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating;

(C) a link to, or website address for, a website that includes the criteria and methodologies used to determine the rating;

(D) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) whether consideration was paid in connection with obtaining the issuance of the rating;

(iii) a description of the types of risks the rating measures (e.g., short-term volatility); and

(iv) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

Amended by SR-FINRA-2016-018 eff. Jan. 9, 2017.
Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Amended by SR-NASD-2005-117 eff. Dec. 27, 2005.
Amended by SR-NASD-2005-104 eff. Aug. 31, 2005.
Amended by SR-NASD-2003-126 eff. Aug. 31, 2003.
Amended by SR-NASD-2001-49 eff. August 10, 2001.
Adopted by SR-NASD-97-89 eff. Feb. 29, 2000.

Selected Notices: 96-84, 00-17, 00-23, 12-29, 16-41.

2214. Requirements for the Use of Investment Analysis Tools

(a) General Considerations

This Rule provides a limited exception to Rule 2210(d)(1)(F). No member may imply that FINRA endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) must provide FINRA's Advertising Regulation Department ("Department") access to the investment analysis tool upon request.

(b) Definition

For purposes of this Rule and any interpretation thereof, an "investment analysis tool" is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

(c) Use of Investment Analysis Tools and Related Written Reports and Retail Communications

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related retail communications only if the tool, written report or related retail communication:

(1) describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) explains that results may vary with each use and over time;

(3) if applicable, describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity, and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) displays the following additional disclosure: "IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various

investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results."

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written (which may be electronic) narrative form.

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

.01 Relationship to Rule 2210(d)(1)(F). Rule 2210(d)(1)(F) states that "[c]ommunications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." This Rule allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related retail communications in certain circumstances. Rule 2210(d)(1)(F) does not prohibit, and this Rule does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

.02 Advertising Regulation Department Requests. A member subject to this Rule must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, or retail communication. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, or retail communication until all changes specified by the Department have been made by the member.

.03 Investment Analysis Tools Used with Institutional Investors. A member that offers an investment analysis tool exclusively to "institutional investors," as defined in Rule 2210(a)(4), is not subject to the post-use access and filing requirement in paragraph (a) of this Rule if the communications relating to or produced by the tool meet the criteria for "institutional communication," as defined in Rule 2210(a)(3). A member that intends to make the tool available to, or that intends to use the tool or any related report with, any "retail investor," as defined in Rule 2210(a)(6) (such as an employee benefit plan participant or a retail broker-dealer customer), will be subject to the filing and access requirements, however.

.04 Compliance with Other Applicable Laws and Rules. As in all cases, a member's compliance with this Rule does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Rule (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with FINRA's suitability rule (Rule 2111), the other provisions of Rule 2210 (including, but not limited to, the

principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for retail communications), the federal securities laws (including, but not limited to, the antifraud provisions), the SEC rules (including, but not limited to, Securities Act Rule 156) and other FINRA rules.

.05 Incidental References to Investment Analysis Tools. A retail communication that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Rule and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210. A retail communication that refers to an investment analysis tool in more detail but does not provide access to the tool or the results generated by the tool must provide the disclosures required by paragraphs (c)(2) and (c)(4), but may exclude the disclosures required by paragraphs (c)(1) and (c)(3).

.06 Investment Analysis Tools that Favor Certain Securities. The disclosure required by paragraph (c)(3) must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market, serves as underwriter, or has any other direct or indirect interest. Members are not required to provide a "negative" disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

Amended by SR-FINRA-2017-036 eff. Jan. 22, 2018.
Amended by SR-FINRA-2016-018 eff. Jan. 9, 2017.
Amended by SR-FINRA-2014-012 eff. July 11, 2014.
Amended by SR-FINRA-2011-035 and SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Adopted by SR-NASD-2003-13 eff. Feb. 15, 2005.

Selected Notices: 04-86, 12-29, 14-30, 16-41.

2215. Communications with the Public Regarding Security Futures

The Rule | Notices

(a) FINRA Filing **Requirements**

(1) As set forth in paragraph (c)(2) of Rule 2210, a member must submit all retail communications concerning security futures to FINRA's Advertising Regulation Department at least 10 business days prior to first use.

(2) The requirements of this paragraph (a) shall not be applicable to:

(A) retail communications concerning security futures that are submitted to another self-regulatory organization having comparable standards pertaining to such retail communications, and

(B) retail communications in which the only reference to security futures is contained in a listing of the services of a member.

(b) Standards Applicable to Security Futures Communications

(1) Communications Used Prior to Delivery of the Security Futures Risk Disclosure Statements

(A) All communications concerning security futures shall be accompanied or preceded by the security futures risk disclosure statement unless they meet the following requirements:

(i) Such communications must be limited to general descriptions of the security futures being offered.

(ii) Such communications must contain contact information for obtaining a copy of the security futures risk disclosure statement.

(iii) Such communications must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities.

(B) Communications concerning security futures that meet the requirements of paragraphs (b)(1)(A)(i) through (iii) may have the following characteristics:

(i) the text of the communication may contain a brief description of security futures, including a statement that identifies registered clearing agencies for security futures. The text may also contain a brief description of the general attributes and method of operation of the securities exchange or notice-registered securities exchange on which such security futures are traded, including a discussion of how a security future is priced;

(ii) the communication may include any statement required by any state law or administrative authority; and

(iii) advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

(2) General Standards

(A) No member or associated person of a member shall distribute or make available any communication concerning a security future that:

(i) contains any statement suggesting the certain availability of a secondary market for security futures;

(ii) fails to reflect the special risks attendant to security futures transactions and the complexities of certain security futures investment strategies;

(iii) fails to include a warning to the effect that security futures are not suitable for all investors or contains suggestions to the contrary; or

(iv) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of security futures programs or the security futures expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

(B) Paragraphs (b)(2)(A)(iii) and (b)(2)(A)(iv) do not apply to institutional communications as defined in Rule 2210(a)(3).

(C) Any statement referring to the potential opportunities or advantages presented by security futures must be balanced by a statement of the corresponding risks. The risk statement must reflect the same degree of specificity as the statement of opportunities, and must avoid broad generalities.

(3) Projections

Notwithstanding the provisions of Rule 2210(d)(1)(F), security futures communications may contain projected performance figures (including projected annualized rates of return), provided that:

(A) all such communications must be accompanied or preceded by the security futures risk disclosure statement;

(B) no suggestion of certainty of future performance is made;

(C) parameters relating to such performance figures are clearly established;

(D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

(E) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F) all material assumptions made in such calculations are clearly identified;

(G) the risks involved in the proposed transactions are disclosed; and

(H) in communications relating to annualized rates of return, that such returns are not based upon any less than a 60-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(4) Historical Performance

Security futures communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications must be accompanied or preceded by the security futures risk disclosure statement;

(B) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted,

the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D) all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return, all material assumptions used in the process of annualization are disclosed;

(F) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H) a principal qualified to supervise security futures activities determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(c) Security Futures Programs

In communications regarding a security futures program (i.e., an investment plan employing the systematic use of one or more security futures strategies), the cumulative history or unproven nature of the program and its underlying assumptions must be disclosed.

(d) Standard Forms of Worksheets

Such worksheets must be uniform within a member. If a member has adopted a standard form of worksheet for a particular security futures strategy, nonstandard worksheets for that strategy may not be used.

(e) Recordkeeping

Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.
Adopted by SR-NASD-2002-40 eff. Oct. 15, 2002.

Selected Notice: 12-29.

2216. Communications with the Public About Collateralized Mortgage Obligations (CMOs)

(a) Definition

For purposes of this Rule, the term "collateralized mortgage obligation" (CMO) refers to a multi-class debt instrument backed by a pool of mortgage pass-through securities or mortgage loans, including real estate mortgage investment conduits (REMICs) as defined in the Tax Reform Act of 1986.

(b) Disclosure Standards and Required Educational Material

(1) Disclosure Standards

All retail communications and correspondence concerning CMOs:

(A) must include within the name of the product the term "Collateralized Mortgage Obligation";

(B) may not compare CMOs to any other investment vehicle, including a bank certificate of deposit;

(C) must disclose, as applicable, that a government agency backing applies only to the face value of the CMO and not to any premium paid; and

(D) must disclose that a CMO's yield and average life will fluctuate depending on the actual rate at which mortgage holders prepay the mortgages underlying the CMO and changes in current interest rates.

(2) Required Educational Material

Before the sale of a CMO to any person other than an institutional investor, as defined in Rule 2210(a)(4), a member must offer to the person educational material that includes the following:

(A) a discussion of:

(i) characteristics and risks of CMOs including credit quality, prepayment rates and average lives, interest rates (including their effect on value and prepayment rates), tax considerations, minimum investments, transaction costs and liquidity;

(ii) the structure of a CMO, including the various types of tranches that may be issued and the rights and risks pertaining to each (including the fact that two CMOs with the same underlying collateral may be prepaid at different rates and may have different price volatility); and

(iii) the relationship between mortgage loans and mortgage securities;

(B) questions an investor should ask before investing; and

(C) a glossary of terms.

(c) Promotion of Specific CMOs

In addition to the standards set forth above, retail communications and correspondence that promote a specific security or contain yield information must conform to the standards set forth below. An example of a compliant communication appears at the end of this Rule.

(1) The retail communication or correspondence must present the following disclosure sections with equal prominence. The information in Sections 1 and 2 must be included. The information in Section 3 is optional; therefore, the member may elect to include any, all or none of this information. The information in Section 4 may be tailored to the member's preferred signature.

Section 1 Title — Collateralized Mortgage Obligations

Coupon Rate

Anticipated Yield/Average Life

Specific Tranche — Number & Class

Final Maturity Date

Underlying Collateral

Section 2 Disclosure Statement:

"The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions."

Section 3 Product Features (Optional):

Minimum Denominations

Rating Disclosure

Agency/Government Backing

Income Payment Structure

Generic Description of Tranche (e.g., PAC, Companion)

Yield to Maturity of CMOs Offered at Par

Section 4 Company Information:

Name, Memberships

Address

Telephone Number

Representative's Name

(2) Additional Conditions

The following conditions must also be met:

(A) All figures in Section 1 must be in equal type size.

(B) The disclosure language in Section 2 may not be altered and must be given equal prominence with the information in Section 1.

(C) The prepayment assumption used to determine the yield and average life must either be obtained from a nationally recognized service or the member must be able to justify the assumption used. A copy of either the service's listing for the CMO or the member's justification must be attached to the copy of the communication that is maintained in the member's advertising files in order to verify that the prepayment scenario is reasonable.

(D) Any sales charge that the member intends to impose must be reflected in the anticipated yield.

(E) The communication must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.

(F) If the security is an accrual bond that does not currently distribute principal and interest payments, then Section 1 must include this information.

(3) Radio/Television Advertisements

(A) The following oral disclaimer must precede any radio or television advertisement in lieu of the Title information set forth in Section 1:

"The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

(B) Radio or television advertisements must contain the following oral disclosure statement in lieu of the legend set forth in Section 2:

"The yield and average life reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

(4) Standardized CMO Communication Example

Collateralized Mortgage Obligations

7.50% Coupon

7.75% Anticipated Yield to 22-Year Average Life

FNMA 9532X, Final Maturity March 2023

Collateral 100% FNMA 7.50%

The yield and average life shown above reflect prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions.

$5,000 Minimum

Income Paid Monthly

Implied Rating/Volatility Rating

Principal and Interest Payments Backed by FNMA

PAC Bond

Offered subject to prior sale and price change.

Call Mary Representative at (800)555-1234

Your Company Securities, Inc., Member SIPC

123 Main Street

Anytown, State 12121

Amended by SR-FINRA-2011-035 eff. Feb. 4, 2013.
Adopted by SR-NASD-2000-12 eff. Nov. 3, 2003.

Selected Notice: 12-29.

2220. Options Communications

The Rule | Notices

(a) Definitions

For purposes of this Rule and any interpretation thereof:

(1) "Options communications" consist of:

(A) "Correspondence." Any "Correspondence" as defined in Rule 2210(a)(2) concerning options.

(B) "Institutional Communication." Any "Institutional Communication" as defined in Rule 2210(a)(3) concerning options.

(C) "Retail Communication." Any "Retail Communication" as defined in Rule 2210(a)(5) concerning options including worksheet templates.

(2) "Standardized option" means any option contract issued, or subject to issuance, by The Options Clearing Corporation, that has standardized terms for the strike price, expiration date, and amount of the underlying security, and is traded on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act.

(3) "Option" as defined in Rule 2360(a).

(4) "Options disclosure document" has the same meaning as the term "disclosure document" as defined in Rule 2360(a).

(b) Approval by a Registered Options Principal and Recordkeeping

(1) Retail Communications. All retail communications (except completed worksheets) issued by a member concerning options shall be approved in advance by a Registered Options Principal designated by the member's written supervisory procedures.

(2) Correspondence. Correspondence need not be approved by a Registered Options Principal prior to use. All correspondence is subject to the supervision and review requirements of Rules 3110(b) and 3110.06 through .09.

(3) Institutional Communications. Each member shall establish written procedures that are appropriate to its business, size, structure, and customers for the review by a Registered Options Principal of institutional communications used by the member and its registered representatives as described in Rule 2210(b)(3).

(4) Copies of the options communications shall be retained by the member in accordance with SEA Rule 17a-4. The names of the persons who prepared the options communications, the names of the persons who approved the options communications, and the source of any recommendations contained therein, shall be retained by the member and be kept in the form and for the time period required for options communications by SEA Rule 17a-4.

(c) FINRA Approval Requirements and Review Procedures

(1) In addition to the approval required by paragraph (b) of this Rule, all retail communications issued by a member concerning standardized options used prior to delivery of the applicable current options disclosure document or prospectus shall be submitted to the Advertising Regulation Department of FINRA (the "Department") at least ten calendar days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Department, shall be withheld from circulation until any changes specified by the Department have been made or, in the event of disapproval, until such options communication has been resubmitted for, and has received, Department approval.

(2)(A) Notwithstanding the foregoing provision, the Department, upon review of a member's options communications, and after determining that the member has departed from the standards of this Rule, may require that such member file some or all options communications or the portions of such member's communications that are related to options with the Department, at least ten calendar days prior to use.

(B) The Department shall notify the member in writing of the types of options communications to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(3) In addition to the foregoing requirements, every member's options communications shall be subject to a routine spot-check procedure. Upon written request from the Department, each member shall promptly submit the communications requested. Members will not be required to submit communications under this procedure that have been previously submitted pursuant to one of the foregoing requirements.

(4) The requirements of this paragraph (c) shall not be applicable to:

(A) options communications submitted to another self-regulatory organization having comparable standards pertaining to such communications;

(B) communications in which the only reference to options is contained in a listing of the services of the member;

(C) the options disclosure document; and

(D) the prospectus.

(d) Standards Applicable to Communications

(1) Communications Regarding Standardized Options used Prior to Delivery of Options Disclosure Document

(A) Options communications regarding standardized options exempted under Securities Act Rule 238 used prior to options disclosure document delivery:

(i) must be limited to general descriptions of the options being discussed. The text may also contain a brief description of options, including a statement that identifies registered clearing agencies for options and a brief description of the general attributes and method of operation of the exchanges on which such options are traded, including a discussion of how an option is priced;

(ii) must contain contact information for obtaining a copy of the options disclosure document;

(iii) must not contain recommendations or past or projected performance figures, including annualized rates of return, or names of specific securities;

(iv) may include any statement required by any state law or administrative authority; and

(v) may include advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics, provided such material is not misleading.

(B) Options communications regarding options not exempted under Securities Act Rule 238 used prior to delivery of a prospectus that meets the requirements of Section 10(a) of the Securities Act must conform to Securities Act Rule 134 or 134a, as applicable.

(2) General Standards

(A) No member or associated person of the member shall use any options communications which:

(i) contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) contains cautionary statements or caveats that are not legible, are misleading, or are inconsistent with the content of the material;

(iv) would constitute a prospectus as that term is defined in the Securities Act, unless it meets the requirements of Section 10 of the Securities Act;

(v) contains statements suggesting the certain availability of a secondary market for options;

(vi) fails to reflect the risks attendant to options transactions and the complexities of certain options investment strategies;

(vii) fails to include a warning to the effect that options are not suitable for all investors or contains suggestions to the contrary; or

(viii) fails to include a statement that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparison, recommendations, statistics, or other technical data, will be supplied upon request.

(B) Subparagraphs (vii) and (viii) above shall not apply to institutional communications as defined in paragraph (a) of this Rule.

(C) Any statement in any options communications referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities must be avoided.

(3) Projections

Options communications may contain projected performance figures (including projected annualized rates of return) provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B) no suggestion of certainty of future performance is made;

(C) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(D) all relevant costs, including commissions, fees, and interest charges (as applicable) are disclosed and reflected in the projections;

(E) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(F) all material assumptions made in such calculations are clearly identified (e.g., "assume option expires," "assume option unexercised," "assume option exercised," etc.);

(G) the risks involved in the proposed transactions are also disclosed; and

(H) in communications relating to annualized rates of return, that such returns are not based upon any less than a 60-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

(4) Historical Performance

Options communications may feature records and statistics that portray the performance of past recommendations or of actual transactions, provided that:

(A) all such communications regarding standardized options are accompanied or preceded by the options disclosure document;

(B) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(C) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

(D) all relevant costs, including commissions, fees, and daily margin obligations (as applicable) are disclosed and reflected in the performance;

(E) whenever such communications contain annualized rates of return, all material assumptions used in the process of annualization are disclosed;

(F) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(G) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(H) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

(5) Options Programs

In communications regarding an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

(6) Violation of Other Rules

Any violation by a member or associated person of any rule or requirement of the SEC or any rule of the Securities Investor Protection Corporation applicable to member communications concerning options will be deemed a violation of this Rule 2220.

Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2009-036 eff. Dec. 14, 2009.
Amended by SR-FINRA-2008-013 eff. March 4, 2009.
Amended by SR-FINRA-2007-035 eff. June 23, 2008.
Amended by SR-NASD-2003-110 eff. June 28, 2004.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Adopted eff. Sept. 13, 1991.

Selected Notices: 85-69, 86-68, 87-24, 87-43, 88-20, 88-52, 88-65, 89-11, 91-26, 91-62, 92-56, 99-16, 04-36, 08-28, 08-73, 09-60.

2231. Customer Account Statements

(a) General

Except as otherwise provided by paragraph (b) of this Rule, each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. In cases where the customer's account is serviced by both an introducing and carrying firm, each general securities member must include in the advisory a reference that such reports be made to both firms. Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).

(b) Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts

Quarterly account statements need not be sent to a customer pursuant to paragraph (a) of this Rule if:

(1) The customer's account is carried solely for the purpose of execution on a DVP/RVP basis;

(2) All transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 11860;

(3) The account does not show security or money positions at the end of the quarter (provided, however that positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions, shall not be deemed security or money positions for the purpose of this paragraph (b));

(4) The customer consents to the suspension of such statements in writing. The member must maintain such consents in a manner consistent with Rule 4512 and SEA Rule 17a-4;

(5) The member undertakes to provide any particular statement or statements to the customer promptly upon request; and

(6) The member undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this Rule shall be seen to qualify or condition the obligations of a member under SEA Rule 15c3-3(j)(1) concerning quarterly notices of free credit balances on statements.

(c) DPP and Unlisted REIT Securities

A general securities member shall include in a customer account statement a per share estimated value of a direct participation program (DPP) or unlisted real estate investment trust (REIT) security, developed in a manner reasonably designed to ensure that the per share estimated value is reliable, and the disclosures in paragraph (c)(2) as applicable.

(1) For purposes of this paragraph (c), a per share estimated value for a DPP or REIT security will be deemed to have been developed in a manner reasonably designed to ensure that it is reliable if the member uses one of the following per share estimated value methodologies.

(A) Net Investment

At any time before 150 days following the second anniversary of breaking escrow, the member may include a per share estimated value reflecting the "net investment" disclosed in the issuer's most recent periodic or current report ("Issuer Report"). "Net investment" shall be based on the "amount available for investment" percentage in the "Estimated Use of Proceeds" section of the offering prospectus or, where "amount available for investment" is not provided, another equivalent disclosure that reflects the estimated percentage deduction from the aggregate dollar amount of securities registered for sale to the public of sales commissions, dealer manager fees, and estimated issuer offering and organization expenses. When the issuer provides a range of amounts available for investment, the member may use the maximum offering percentage unless the member has reason to believe that such percentage is unreliable, in which case the member shall use the minimum offering percentage.

(B) Appraised Value

At any time, the member may include a per share estimated value reflecting an appraised valuation disclosed in the Issuer Report, which, in the case of DPPs subject to the Investment Company Act ("1940 Act"), shall be consistent with the valuation requirements of the 1940 Act and the rules thereunder or, in the case of all other DPPs and REITs, shall be:

(i) based on valuations of the assets and liabilities of the DPP or REIT performed at least annually, by, or with the material assistance or confirmation of, a third-party valuation expert or service; and

(ii) derived from a methodology that conforms to standard industry practice.

(2) Disclosures

(A) An account statement that provides a "net investment" per share estimated value for a DPP or REIT security under paragraph (c)(1)(A) shall disclose, if applicable, prominently and in proximity to disclosure of distributions and the per share estimated value the following statements: "IMPORTANT—Part of your distribution includes a return of capital. Any distribution that represents a return of capital reduces the estimated per share value shown on your account statement."

(B) Any account statement that provides a per share estimated value for a DPP or REIT security shall disclose that the DPP or REIT securities are not listed on a national securities exchange, are generally illiquid and that, even if a customer is able to sell the securities, the price received may be less than the per share estimated value provided in the account statement.

(d) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) "Account Activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and journal entries relating to securities or funds in the possession or control of the member.

(2) "General Securities Member" refers to 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 Rule.

(3) "Direct Participation Program" or "Direct Participation Program Security" refers to the publicly issued equity securities of a direct participation program as defined in Rule 2310 (including limited liability companies), but does not include securities listed on a national securities exchange or any program registered as a commodity pool with the Commodity Futures Trading Commission.

(4) "Real Estate Investment Trust" or "Real Estate Investment Trust Security" refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities listed on a national securities exchange.

(5) "Annual Report" means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Exchange Act.

(6) "DVP/RVP account" refers to an arrangement whereby payment for securities purchased is made to the selling customer's agent or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

(e) Exemptions

Pursuant to the Rule 9600 Series, FINRA may exempt any member from the provisions of this Rule for good cause shown.

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

.01 Compliance with Rule 4311 (Carrying Agreements). Members are reminded of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2) that generally requires each carrying agreement in which accounts are to be 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.

.02 Transmission of Customer Account Statements to Other Persons or Entities

(a) Except as provided for in paragraph (b) of this Supplementary Material, a member may not send account statements relating to a customer's account(s) to other persons or entities unless:

(1) the customer has provided written instructions to the member to send the statements to such person or entity; and

(2) the member continues to send accounts statements directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 of this Rule.

(b) Where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on behalf of a customer, a member may cease sending account statements to the customer upon written instructions from such court-appointed fiduciary provided that the court-appointed fiduciary furnishes to the member an official copy of the court appointment that establishes authority over the customer's account(s).

(c) Notwithstanding paragraph (a) of this Supplementary Material, a member may provide duplicate customer account statement(s) under Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rule.

.03 Use of Electronic Media to Satisfy Delivery Obligations. A member may satisfy its delivery obligations under this Rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes.

.04 Compliance with Rule 3150 (Holding of Customer Mail). A member is permitted to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.

.05 Information to be Disclosed on Statement. Customer account statements must clearly and prominently disclose on the front of the statement:

(a) The identity of the introducing firm and carrying firm (if different) and their respective contact information for customer service. The identity of the carrying firm and its contact information for customer service may appear on the back of the statement provided such information is in "bold" or "highlighted" letters;

(b) That the carrying firm is a member of SIPC; and

(c) The opening and closing balances for the account.

.06 Assets Externally Held. Where a customer account statement includes assets that the member does not carry on behalf of the customer and that are not included on the member's books and records, such assets must be clearly and distinguishably separated on the statement. The statement must:

(a) Clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer;

(b) Disclose that information (including valuation) for such externally held assets included on the statement is derived from the customer or other external source for which the member is not responsible; and

(c) Identify that such externally held assets may not be covered by SIPC.

.07 Use of Logos, Trademarks, etc. Where the logo, trademark or other similar identification of a person (other than the introducing firm or carrying firm) appears on a customer account statement, the identity of such person(s) and the relationship to the introducing, carrying or other firm included on the statement must be provided and may not be used in a manner that is misleading or causes customer confusion.

.08 Use of Summary Statements. Where a member holds a customer's account and another person(s) who separately offers financial related products or services to the same customer (e.g. mutual fund sales and custodial services, banking products and services, insurance products and services, securities products and services, etc.) seek to jointly provide their respective customer account statements together with a statement summarizing or combining assets held in different accounts ("summary statement") the member is required to:

(a) In the summary statement:

(1) indicate that the summary statement is provided for the customer's convenience and includes assets that may not be held by the broker-dealer;

(2) indicate that the summary statement does not replace any other statement(s) the customer may receive from other financial institutions that hold the customer's assets;

(3) identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing firm, carrying firm, fund distributor, banking or insurance product provider, etc.);

(4) clearly distinguish between assets held or categories of assets held by each entity included in the summary;

(5) identify the customer's account number at each entity and provide contact information for customer service at each entity; if the customer's account number and the contact information for customer service at each entity are included on their respective account statements, then such information need not be included on the summary statement; and

(6) identify each entity that is a member of SIPC;

(b) Ensure that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation is recognizable as having been arithmetically derived from the separately stated totals or their components;

(c) Distinguish the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) by color, pagination or other distinct form of demarcation;

(d) Ensure that there is a written agreement between the carrying firm and each other person jointly providing its respective customer account statements attesting that each such person has developed procedures and controls for reviewing and testing the accuracy of the information included on its respective statements; and

(e) Ensure that the summary statement complies with Rule 2231.

Amended by SR-FINRA-2021-024 eff. Jan. 1, 2024.
Amended by SR-FINRA-2019-009 eff. May 8, 2019.
Amended by SR-FINRA-2014-006 eff. April 11, 2016.
Amended by SR-NASD-2004-171 eff. May 31, 2007.
Amended by SR-NASD-2006-128 eff. Dec. 5, 2006.
Amended by SR-NASD-2006-066 eff. Nov. 22, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2003-36 eff. March 12, 2003.
Amended by SR-NASD-2000-13 eff. April 16, 2001.
Adopted by SR-NASD-92-29 eff. Jan. 31, 1993.

Selected Notices: 92-30, 92-60, 94-96, 97-14, 01-08, 06-60, 06-68, 06-72, 15-02, 23-02.

2232. Customer Confirmations

The Rule | Notices

(a) A member shall, at or before the completion of any transaction in any security effected for or with an account of a customer, give or send to such customer written notification ("confirmation") in conformity with the requirements of SEA Rule 10b-10.

(b) A confirmation given or sent pursuant to this Rule shall further disclose:

(1) with respect to any transaction in any NMS stock, as defined in Rule 600 of SEC Regulation NMS, or any security subject to the reporting requirements of the FINRA Rule 6600 Series, other than direct participation programs as defined in FINRA Rule 6420, the settlement date of the transaction; and

(2) with respect to any transaction in a callable equity security, that:

(A) the security is a callable equity security; and

(B) a customer may contact the member for more information concerning the security.

(c) A confirmation shall include the member's mark-up or mark-down for the transaction, to be calculated in compliance with Rule 2121, expressed as a total dollar amount and as a percentage of the prevailing market price if:

(1) the member is effecting a transaction in a principal capacity in a corporate or agency debt security with a non-institutional customer, and

(2) the member purchased (sold) the security in one or more offsetting transactions in an aggregate trading size meeting or exceeding the size of such sale to (purchase from) the non-institutional customer on the same trading day as the non-institutional customer transaction. If any such transaction occurs with an affiliate of the member and is not an arms-length transaction, the member is required to "look through" to the time and terms of the affiliate's transaction with a third party in the security in determining whether the conditions of this paragraph have been met.

(d) A member shall not be required to include the disclosure specified in paragraph (c) above if:

(1) the non-institutional customer transaction was executed by a principal trading desk that is functionally separate from the principal trading desk within the same member that executed the member purchase (in the case of a sale to a customer) or member sale (in the case of a purchase from a customer) of the security, and the member had in place policies and procedures

reasonably designed to ensure that the functionally separate principal trading desk through which the member purchase or member sale was executed had no knowledge of the customer transaction; or

(2) the member acquired the security in a fixed-price offering and sold the security to non-institutional customers at the fixed price offering price on the day the securities were acquired.

(e) For all transactions in corporate or agency debt securities with non-institutional customers, the member shall also provide on the confirmation: (1) a reference, and hyperlink if the confirmation is electronic, to a web page hosted by FINRA that contains Trade Reporting And Compliance Engine (TRACE) publicly available trading data for the specific security that was traded, in a format specified by FINRA, along with a brief description of the type of information available on that page; and (2) the execution time of the customer transaction, expressed to the second.

(f) Definitions

For purposes of this Rule, the term:

(1) "agency debt security" shall have the same meaning as in Rule 6710(l);

(2) "corporate debt security" shall mean a debt security that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A, but does not include a Money Market Instrument as defined in Rule 6710(o) or an Asset-Backed Security as defined in Rule 6710(cc);

(3) "arms-length transaction" shall mean a transaction that was conducted through a competitive process in which non-affiliate firms could also participate, and where the affiliate relationship did not influence the price paid or proceeds received by the member; and

(4) "non-institutional customer" shall mean a customer with an account that is not an institutional account, as defined in Rule 4512(c).

Amended by SR-FINRA-2016-032 eff. May 14, 2018.
Amended by SR-FINRA-2010-066 eff. June 17, 2011.
Adopted by SR-FINRA-2009-058 eff. June 17, 2011.

Selected Notices: 10-62, 17-08, 17-24.

2241. Research Analysts and Research Reports

The Rule | Notices

(a) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

(1) "Emerging Growth Company" has the same meaning as in Section 3(a)(80) of the Exchange Act.

(2) "Equity security" has the same meaning as defined in Section 3(a)(11) of the Exchange Act.

(3) "Independent third-party research report" means a third-party research report, in respect of which the person producing the report:

(A) has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and

(B) makes content determinations without any input from the distributing member or that member's affiliates.

(4) "Investment banking department" means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(5) "Investment banking services" include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(6) "Member of a research analyst's household" means any individual whose principal residence is the same as the research analyst's principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another.

(7) "Public appearance" means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning an equity security. This term does not include a

password protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the event any disclosures in the research report that are inaccurate, misleading or no longer applicable.

(8) "Research analyst" means an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "research analyst."

(9) "Research analyst account" means any account in which a research analyst or member of the research analyst's household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act over which the research analyst or a member of the research analyst's household has discretion or control, provided that the research analyst or member of the research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a "blind trust" account that is controlled by a person other than the research analyst or member of the research analyst's household where neither the research analyst nor a member of the research analyst's household knows of the account's investments or investment transactions.

(10) "Research department" means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(11) "Research report" means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange) and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) communications that are limited to the following:

(i) discussions of broad-based indices;

(ii) commentaries on economic, political or market conditions;

(iii) technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

(iv) statistical summaries of multiple companies' financial data, including listings of current ratings;

(v) recommendations regarding increasing or decreasing holdings in particular industries or sectors;

(vi) notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent research report on the subject company that includes all current applicable disclosures required by this Rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable; or

(B) the following communications, even if they include an analysis of an individual equity security and information reasonably sufficient upon which to base an investment decision:

(i) any communication distributed to fewer than 15 persons;

(ii) periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(iii) internal communications that are not given to current or prospective customers;

(C) communications that constitute statutory prospectuses that are filed as part of a registration statement; and

(D) communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.

(12) "Sales and trading personnel" includes persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.

(13) "Subject company" means the company whose equity securities are the subject of a research report or public appearance.

(14) "Third-party research report" means a research report that is produced by a person other than the member.

(15) "Covered investment fund" has the meaning given the term in paragraph (c)(2) of Securities Act Rule 139b.

(16) "Covered investment fund research report" has the meaning given that term in paragraph (c)(3) of Securities Act Rule 139b.

(b) Identifying and Managing Conflicts of Interest

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

(A) the preparation, content and distribution of research reports;

(B) public appearances by research analysts; and

(C) the interaction between research analysts and those outside of the research department, including investment banking and sales and trading personnel, subject companies and customers.

(2) A member's written policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers. Such policies and procedures must:

(A) prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel;

(B) restrict or limit input by the investment banking department into research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan;

(C) prohibit persons engaged in investment banking activities from supervision or control of research analysts, including influence or control over research analyst compensation evaluation and determination;

(D) limit determination of the research department budget to senior management, excluding senior management engaged in investment banking services activities;

(E) prohibit compensation based upon specific investment banking services transactions or contributions to a member's investment banking services activities;

(F) require that the compensation of a research analyst who is primarily responsible for preparation of the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors, or if the member has no board of directors, a senior executive officer of the member. This committee may not have representation from the member's investment banking department and must

consider the following factors when reviewing a research analyst's compensation, if applicable:

(i) the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;

(ii) the correlation between the research analyst's recommendations and the performance of the recommended securities; and

(iii) the overall ratings received from clients, sales force and peers independent of the member's investment banking department, and other independent ratings services.

The committee must document the basis upon which each such research analyst's compensation was established;

(G) establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision;

(H) prohibit direct or indirect retaliation or threat of retaliation against research analysts employed by the member or its affiliates by persons engaged in investment banking services activities or other employees as the result of an adverse, negative, or otherwise unfavorable research report or public appearance written or made by the research analyst that may adversely affect the member's present or prospective business interests;

(I) define periods during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer:

(i) of a minimum of 10 days following the date of an initial public offering if the member has participated as an underwriter or dealer in the initial public offering; or

(ii) of a minimum of three days following the date of a secondary offering if the member has acted as a manager or co-manager of that offering.

This subparagraph (I) shall not apply to the publication or distribution of a research report or a public appearance following: (1) an initial public offering or secondary offering of the securities of an Emerging Growth Company or (2) any offering of the securities of a covered investment fund that is the subject of a covered investment fund research report;

(iii) Subparagraphs (I)(i) and (ii) shall not prevent a member from publishing or otherwise distributing a research report, or prevent a research analyst from making a public appearance, concerning the effects of significant news or a significant event on the subject company within such 10- and three-day periods, and provided further that legal or compliance personnel authorize publication of that research report before it is issued or authorize the public appearance before it is made. Subparagraph (ii) will not prevent a member from publishing or otherwise distributing a research report pursuant to Securities Act Rule 139 regarding a subject company with "actively-traded securities," as defined in Rule 101(c)(1) of SEC Regulation M, and will not prevent a research analyst from making a public appearance concerning such a company.

(J) restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst, including:

(i) ensuring that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report;

(ii) providing that no research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent research report published by the member, and defining financial hardship circumstances, if any (e.g., unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account), in which the member will permit a research analyst account to trade in a manner inconsistent with such research analyst's most recently published recommendation; and

(iii) prohibiting a research analyst account from purchasing or receiving any security before an issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows;

(K) prohibit explicit or implicit promises of favorable research, a particular research rating or recommendation or specific research content as inducement for the receipt of business or compensation;

(L) restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity, including prohibiting:

(i) participation in pitches and other solicitations of investment banking services transactions; and

(ii) participation in road shows and other marketing on behalf of an issuer related to an investment banking services transaction;

(M) prohibit investment banking department personnel from directly or indirectly:

(i) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(ii) directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction; and

(N) prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.

(c) Content and Disclosure in Research Reports

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that:

(A) purported facts in its research reports are based on reliable information; and

(B) any recommendation, rating or price target has a reasonable basis and is accompanied by a clear explanation of any valuation method used and a fair presentation of the risks that may impede achievement of the recommendation, rating or price target.

(2) A member that employs a rating system must clearly define in each research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based. The definition of each rating must be consistent with its plain meaning.

(A) Irrespective of the rating system a member employs, a member must include in each research report that includes a rating the percentage of all securities rated by the member to which the member would assign a "buy," "hold" or "sell" rating.

(B) A member must disclose in each research report the percentage of subject companies within each of the "buy," "hold" and "sell" categories for which the member has provided investment banking services within the previous 12 months.

(C) The information required in paragraphs (c)(2)(A) and (B) must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter.

(3) If a research report contains either a rating or price target for a subject company's security, and the member has assigned a rating or price target to such security for at least one year, the research report must include a line graph of the security's daily closing prices for the period that the member has assigned any rating or price target or for a three-year period, whichever is shorter. The graph must:

(A) indicate the dates on which the member assigned or changed each rating or price target;

(B) depict each rating or price target assigned or changed on those dates; and

(C) be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter).

(4) A member must disclose in any research report at the time of publication or distribution of the report:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;

(C) if the member or any of its affiliates:

(i) managed or co-managed a public offering of securities for the subject company in the past 12 months;

(ii) received compensation for investment banking services from the subject company in the past 12 months; or

(iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;

(D) if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication or distribution date is less than 30 calendar days after the end of the most recent month), the member or its affiliates have received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;

(E) if the subject company is, or over the 12-month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services;

(F) if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(G) if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report;

(H) if the research analyst received any compensation from the subject company in the previous 12 months; and

(I) any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.

(5) A member or research analyst will not be required to make a disclosure required by paragraph (c)(4) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions.

(6) The disclosures required by this paragraph (c) must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by this Rule must be clear, comprehensive and prominent.

(7) A member that distributes a research report covering six or more subject companies (a "compendium report") may direct the reader in a clear manner as to where the reader may obtain applicable current disclosures required by this paragraph (c). Electronic compendium reports may include a hyperlink directly to the required disclosures. Paper-based compendium reports must provide either a toll free number to call or a postal address to request the required disclosures and may also include a web address where the disclosures can be found.

(d) Disclosure in Public Appearances

(1) A research analyst must disclose in public appearances:

(A) if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without

limitation, whether it consists of any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(C) if, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;

(D) if the research analyst received any compensation from the subject company in the previous 12 months;

(E) if, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst; or

(F) any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance.

(2) A member or research analyst will not be required to make a disclosure required by this paragraph (d) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

(3) Members must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements in this paragraph (d). Such records must be maintained for at least three years from the date of the public appearance.

(e) Disclosure Required by Other Provisions

In addition to the disclosures required by paragraphs (c) and (d), members and research analysts must comply with all applicable disclosure provisions of FINRA Rule 2210 and the federal securities laws.

(f) Termination of Coverage

A member must promptly notify its customers if it intends to terminate coverage of a subject company. Such notice must be made using the member's ordinary means to disseminate research reports on the subject company to its various customers. The notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final

recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a member must disclose to its customers its reason for terminating coverage.

(g) Distribution of Member Research Reports

A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that the member has previously determined are entitled to receive the research report.

(h) Distribution of Third-Party Research Reports

(1) Subject to paragraph (h)(5), a registered principal or supervisory analyst approved pursuant to Incorporated Rule 1220(a)(14) must review for compliance with the applicable provisions of paragraph (h) and approve by signature or initial all third-party research reports distributed by a member.

(2) A member may not distribute third-party research if it knows or has reason to know such research is not objective or reliable.

(3) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party research it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purposes of this paragraph (h)(3) only, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that:

(A) should be known from reading the report; or

(B) is known based on information otherwise possessed by the member.

(4) A member must accompany any third-party research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third-party research provider or the subject company of a third-party research report, including the disclosures required by paragraphs (c)(4)(C), (c)(4)(F), (c)(4)(G) and (c)(4)(I) of this Rule.

(5) A member shall not be required to review a third-party research report to determine compliance with paragraph (h)(3) if such research report is an independent third-party research report.

(6) A member shall not be considered to have distributed a third-party research report for the purposes of paragraph (h)(4) where the research is an independent third-party research report and is made available by a member (a) upon request; (b) through a member-maintained website; or (c) to a customer in connection with a solicited order in which the registered

representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security and the customer requests such independent research.

(7) A member must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.

(i) Exemption for Members with Limited Investment Banking Activity

The provisions of paragraphs (b)(2)(A), (B), (C), (D), (F) and (G) shall not apply to members that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated $5 million or less in gross investment banking revenues from those transactions; provided, however, that with respect to paragraph (b)(2)(G), such members must establish information barriers or other institutional safeguards reasonably designed to ensure that research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including sales and trading personnel, who might be biased in their judgment or supervision. For the purposes of this paragraph (i), the term "investment banking services transactions" include the underwriting of both corporate debt and equity securities but not municipal securities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A), (B), (C), (D), (F) and (G).

(j) Exemption for Good Cause

Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, conditionally or unconditionally grant an exemption from any requirement of this Rule for good cause shown after taking into account all relevant factors, to the extent such exemption is consistent with the purposes of the Rule, the protection of investors, and the public interest.

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

.01 Efforts to Solicit Investment Banking Business

(a) FINRA interprets paragraph (b)(2)(L)(i) to prohibit in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage. For example, FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. On the other hand, a member would be permitted to include in the pitch materials the fact of coverage and the name of the research analyst because such information alone does not imply favorable coverage.

Members must consider whether the facts and circumstances of any solicitation or engagement would warrant disclosure under Section 17(b) of the Securities Act.

(b) Paragraph (b)(2)(L)(i) shall not prevent a research analyst from attending a pitch meeting in connection with an initial public offering of an Emerging Growth Company that also is attended by investment banking personnel; provided, however, that a research analyst may not engage in otherwise prohibited conduct in such meetings, including efforts to solicit investment banking business.

.02 Joint Due Diligence. FINRA interprets paragraph (b)(1)(C) to prohibit the performance of joint due diligence (i.e., confirming the adequacy of disclosure in offering or other disclosure documents for a transaction) by the research analyst in the presence of investment banking department personnel prior to the selection by the issuer of the underwriters for the investment banking services transaction.

.03 Restrictions on Communications with Customers and Internal Personnel

(a) Consistent with the requirements of paragraph (b)(2)(M) of this Rule, no research analyst may engage in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(b) FINRA interprets paragraph (b)(1)(C) of this Rule to require that any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

.04 Disclosure of Non-Investment Banking Services Compensation. A member may satisfy the disclosure requirement in paragraph (c)(4)(D) with respect to receipt of non-investment banking services compensation by an affiliate by implementing policies and procedures reasonably designed to prevent the research analyst and associated persons of the member with the ability to influence the content of research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation. However, a member must disclose receipt of non-investment banking services compensation by its affiliates from the subject company in the past 12 months when the research analyst or an associated person with the ability to influence the content of a research report has actual knowledge that an affiliate received such compensation during that time period.

.05 Submission of Sections of a Draft Research Reports for Factual Review. Consistent with the requirements of paragraphs (b)(2)(A) and (b)(2)(N), sections of a draft research report may be provided to non-investment banking personnel or to the subject company for factual review so long as:

(a) the sections of the report submitted do not contain the research summary, the research rating or the price target;

(b) a complete draft of the report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel or the subject company; and

(c) if, after submitting sections of the report to non-investment banking personnel or the subject company, the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, legal or compliance personnel for the change. The member must retain copies of any draft and the final version of such report for three years after publication.

.06 Beneficial Ownership of Equity Securities. With respect to paragraphs (c)(4)(F) and (d)(1)(B), beneficial ownership of any class of common equity securities shall be computed in accordance with the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Exchange Act.

.07 Distribution of Member Research Products. With respect to paragraph (g), a member may provide different research products and services to different classes of customers. For example, a member may offer one research product for those with a long-term investment horizon ("investor research") and a different research product for those customers with a short-term investment horizon ("trading research"). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member's ratings system for each respective product. However, a member may not differentiate a research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a research product with substantially the same content as a different product as a means to allow certain customers to trade in advance of other customers. In addition, a member that provides different research products and services for different customers must inform its other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the equity security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research.

.08 Ability to Influence the Content of a Research Report. For the purposes of this Rule, an associated person with the ability to influence the content of a research report is an associated person who is required to review the content of the research report or has exercised authority to review or change the research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a research report for compliance purposes but are not authorized to dictate a particular recommendation, rating or price target.

.09 Obligations of Persons Associated with a Member. Consistent with Rule 0140, persons associated with a member must comply with such member's written policies and procedures as established pursuant to this Rule 2241. In addition, consistent with Rule 0140, it shall be a violation of this Rule for an associated person to engage in the restricted or prohibited conduct to be addressed

through the establishment, maintenance and enforcement of policies and procedures required by this Rule or related Supplementary Material.

.10 Divesting Research Analyst Holdings. With respect to paragraph (b)(2)(J)(ii), FINRA shall not consider a research analyst account to have traded in a manner inconsistent with a research analyst's recommendation where a member has instituted a policy that prohibits any research analyst from holding securities, or options on or derivatives of such securities, of the companies in the research analyst's coverage universe; provided that the member establishes a reasonable plan to liquidate such holdings consistent with the principles in paragraph (b)(2)(J)(i) and such plan is approved by the member's legal or compliance department.

Amended by SR-FINRA-2019-017 eff. Aug. 16, 2019.
Amended by SR-FINRA-2019-009 eff. May 8, 2019.
Adopted by SR-FINRA-2014-047 eff. Sept. 25, 2015 and Dec. 24, 2015.

Selected Notice: 15-30, 19-32.

242. Debt Research Analysts and Debt Research Reports

(a) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

(1) "Debt research analyst" means an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a debt research analyst in connection with, the preparation of the substance of a debt research report, whether or not any such person has the job title of "research analyst."

(2) "Debt research analyst account" means any account in which a debt research analyst or member of the debt research analyst's household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act over which the debt research analyst or a member of the debt research analyst's household has discretion or control, provided that the debt research analyst or member of a debt research analyst's household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a "blind trust" account that is controlled by a person other than the debt research analyst or member of the debt research analyst's household where neither the debt research analyst nor a member of the debt research analyst's household knows of the account's investments or investment transactions.

(3) "Debt research report" means any written (including electronic) communication that includes an analysis of a debt security or an issuer of a debt security and that provides information reasonably sufficient upon which to base an investment decision, excluding communications that solely constitute an equity research report as defined in Rule 2241(a)(11). In general, this term shall not include:

(A) communications that are limited to the following, if they do not include an analysis of, or recommend or rate, individual debt securities or issuers:

(i) discussions of broad-based indices;

(ii) commentaries on economic, political or market conditions;

(iii) commentaries on or analyses of particular types of debt securities or characteristics of debt securities;

(iv) technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

(v) recommendations regarding increasing or decreasing holdings in particular industries or sectors or types of debt securities; or

(vi) notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent debt research report on the subject company that includes all current applicable disclosures required by this Rule and that such debt research report does not contain materially misleading disclosure, including disclosures that are outdated or no longer applicable;

(B) the following communications, even if they include an analysis of an individual debt security or issuer and information reasonably sufficient upon which to base an investment decision:

(i) statistical summaries of multiple companies' financial data, including listings of current ratings that do not include an analysis of individual companies' data;

(ii) an analysis prepared for a specific person or a limited group of fewer than 15 persons;

(iii) periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual debt securities in the context of a fund's or account's past performance or the basis for previously made discretionary investment decisions; or

(iv) internal communications that are not given to current or prospective customers;

(C) communications that constitute statutory prospectuses that are filed as part of the registration statement; and

(D) communications that constitute private placement memoranda and comparable offering-related documents prepared in connection with investment banking services transactions, other than those that purport to be research.

(4) "Debt security" means any "security" as defined in Section 3(a)(10) of the Exchange Act, except for any "equity security" as defined in Section 3(a)(11) of the Exchange Act, any "municipal security" as defined in Section 3(a)(29) of the Exchange Act, any "security-based swap" as defined in Section 3(a)(68) of the Exchange Act, and any "U.S. Treasury Security" as defined in paragraph (p) of Rule 6710.

(5) "Debt trader" means a person, with respect to transactions in debt securities, who is engaged in proprietary trading or the execution of transactions on an agency basis.

(6) "Independent third-party debt research report" means a third-party debt research report, in respect of which the person producing the report:

(A) has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and

(B) makes content determinations without any input from the distributing member or that member's affiliates.

(7) "Institutional investor" means any person that satisfies the requirements of paragraph (j)(1)(A) or (B) of this Rule.

(8) "Investment banking department" means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(9) "Investment banking services" include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(10) "Member of a debt research analyst's household" means any individual whose principal residence is the same as the debt research analyst's principal residence. This term shall not include an unrelated person who shares the same residence as a debt research analyst, provided that the debt research analyst and unrelated person are financially independent of one another.

(11) "Public appearance" means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a debt research analyst makes a recommendation or offers an opinion concerning a debt security or an issuer of a debt security. This term shall not include a password protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current debt research report or other documentation that contains the required applicable disclosures, and that the debt research analyst appearing at the event corrects and updates during the event any disclosures in the debt research report that are inaccurate, misleading or no longer applicable.

(12) "Qualified institutional buyer" has the same meaning as under Rule 144A of the Securities Act.

(13) "Retail investor" means any person other than an institutional investor.

(14) "Research department" means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a debt research report on behalf of a member.

(15) "Sales and trading personnel" includes persons in any department or division, whether or not identified as such, who perform any sales or trading service on behalf of a member.

(16) "Subject company" means the issuer whose debt securities are the subject of a debt research report or a public appearance.

(17) "Third-party debt research report" means a debt research report that is produced by a person or entity other than the member.

(b) Identifying and Managing Conflicts of Interest

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

(A) the preparation, content and distribution of debt research reports;

(B) public appearances by debt research analysts; and

(C) the interaction between debt research analysts and those outside of the research department, including investment banking department personnel, sales and trading personnel, principal trading personnel, subject companies and customers;

(2) A member's written policies and procedures must be reasonably designed to promote objective and reliable debt research that reflects the truly held opinions of debt research analysts and to prevent the use of debt research reports or debt research analysts to manipulate or condition the market or favor the interests of the member or a current or prospective customer or class of customers. Such policies and procedures must:

(A) prohibit prepublication review, clearance or approval of debt research reports by:

(i) investment banking personnel;

(ii) principal trading personnel; and

(iii) sales and trading personnel;

(B) restrict or prohibit prepublication review, clearance or approval of debt research reports by other persons not directly responsible for the preparation, content and distribution of debt research reports, other than legal and compliance personnel;

(C) restrict or limit input by investment banking department, sales and trading and principal trading personnel into debt research coverage decisions to ensure that research management independently makes all final decisions regarding the research coverage plan;

(D) limit supervision of a debt research analyst to persons not engaged in:

(i) investment banking services transactions (such persons shall also be precluded from input into the compensation of debt research analysts);

(ii) principal trading activities (such persons shall also be precluded from input into the compensation of debt research analysts); or

(iii) sales and trading;

(E) limit determination of the debt research department budget to senior management, excluding senior management engaged in investment banking services or principal trading activities, and without regard to specific revenues or results derived from investment banking. Revenues and results of the firm as a whole, however, may be considered in determining the debt research department budget and allocation of debt research department expenses. Nothing in this provision shall require a member to prohibit any personnel from providing to senior management input regarding the demand for and quality of debt research, including product trends and customer interests;

(F) prohibit compensation based upon specific investment banking services or specific trading transactions or contributions to a member's investment banking services or principal trading activities;

(G) require that the compensation of a debt research analyst who is primarily responsible for the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors, or if the member has no board of directors, a senior executive officer of the member. This committee may not have representation from investment banking personnel or persons engaged in principal trading activities and must consider the following factors when reviewing a debt research analyst's compensation, if applicable:

(i) the debt research analyst's individual performance, including the analyst's productivity and the quality of the debt research analyst's research; and

(ii) the overall ratings received from customers and peers (independent of the member's investment banking department and persons engaged in principal trading activities) and other independent ratings services.

Sales and trading personnel, but not personnel engaged in principal trading activities, may provide input to debt research management into the evaluation of the debt research analyst in order to convey customer feedback; provided, however, that final compensation determinations must be made by research management, subject to review and approval by the committee described in this subparagraph (G).

The committee must document the basis upon which each such research analyst's compensation was established, including any input from sales and trading;

(H) establish information barriers or other institutional safeguards reasonably designed to ensure that debt research analysts are insulated from the review, pressure or oversight by persons engaged in:

(i) investment banking services;

(ii) principal trading or sales and trading activities; and

(iii) other persons who might be biased in their judgment or supervision;

(I) prohibit direct or indirect retaliation or threat of retaliation against debt research analysts by any employee of the member as the result of an adverse, negative, or otherwise unfavorable debt research report or public appearance written or made by the debt research analyst that may adversely affect the member's present or prospective business interests;

(J) restrict or limit debt research analyst account trading in securities, any derivatives of such securities and any fund whose performance is materially dependent upon the performance of securities covered by the debt research analyst, including:

(i) ensuring that debt research analyst accounts, supervisors of debt research analysts and associated persons with the ability to influence the content of debt research reports do not benefit in their trading from knowledge of the content or timing of a debt research report before the intended recipients of such debt research have had a reasonable opportunity to act on the information in the debt research report; and

(ii) providing that no debt research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's recommendation as reflected in the most recent debt research report published by the member, and defining financial hardship circumstances, if any (e.g., unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account), in which the member will permit a