2010. STANDARDS OF COMMERCIAL HONOR AND PRINCIPLES OF TRADE

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
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.

‹ 2000. DUTIES AND CONFLICTS UP 2020. USE OF MANIPULATIVE, DECEPTIVE OR OTHER FRAUDULENT DEVICES ›

2020. Use of Manipulative, Deceptive or Other Fraudulent Devices

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.

‹ 2010. STANDARDS OF COMMERCIAL HONOR AND PRINCIPLES OF TRADE UP 2030. ENGAGING IN DISTRIBUTION AND SOLICITATION ACTIVITIES WITH GOVERNMENT ENTITIES ›

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.

‹ 2030. ENGAGING IN DISTRIBUTION AND SOLICITATION ACTIVITIES WITH GOVERNMENT ENTITIES

UP

2060. USE OF INFORMATION OBTAINED IN FIDUCIARY CAPACITY ›

2060. Use of Information Obtained in Fiduciary Capacity

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.

‹ 2040. PAYMENTS TO UNREGISTERED PERSONS UP 2070. TRANSACTIONS INVOLVING FINRA EMPLOYEES ›

2070. Transactions Involving FINRA Employees

(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.

‹ 2060. USE OF INFORMATION OBTAINED IN FIDUCIARY CAPACITY | UP | 2080. OBTAINING AN ORDER OF EXPUNGEMENT OF CUSTOMER DISPUTE INFORMATION FROM THE CENTRAL REGISTRATION DEPOSITORY (CRD) SYSTEM ›

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

(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.

‹ 2070. TRANSACTIONS INVOLVING FINRA EMPLOYEES UP 2081. PROHIBITED CONDITIONS RELATING TO EXPUNGEMENT OF CUSTOMER DISPUTE ›

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

‹ 2080. OBTAINING AN ORDER OF EXPUNGEMENT OF CUSTOMER DISPUTE INFORMATION FROM THE CENTRAL REGISTRATION DEPOSITORY (CRD) SYSTEM

UP

2090. KNOW YOUR CUSTOMER ›

2090. Know Your Customer

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.

‹ 2081. PROHIBITED CONDITIONS RELATING TO EXPUNGEMENT OF CUSTOMER DISPUTE | UP | 2100. TRANSACTIONS WITH CUSTOMERS ›

2111. Suitability

(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.

‹ 2110. RECOMMENDATIONS UP 2114. RECOMMENDATIONS TO CUSTOMERS IN OTC EQUITY SECURITIES ›

2114. Recommendations to Customers in OTC Equity Securities

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.

‹ 2111. SUITABILITY UP 2120. COMMISSIONS, MARK UPS AND CHARGES ›

VERSIONS

Dec 05, 2011 onwards

2121. Fair Prices and Commissions

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.

---

[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.

‹ 2120. COMMISSIONS, MARK UPS AND CHARGES UP 2122. CHARGES FOR SERVICES PERFORMED ›

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.

‹ 2121. FAIR PRICES AND COMMISSIONS UP 2124. NET TRANSACTIONS WITH CUSTOMERS ›

2124. Net Transactions with Customers

(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.

‹ 2122. CHARGES FOR SERVICES PERFORMED UP 2130. APPROVAL PROCEDURES FOR DAY-TRADING ACCOUNTS ›

VERSIONS

Dec 05, 2011 onwards

2130. Approval Procedures for Day-Trading Accounts

(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.

‹ 2124. NET TRANSACTIONS WITH CUSTOMERS UP 2140. INTERFERING WITH THE TRANSFER OF CUSTOMER ACCOUNTS IN THE CONTEXT OF EMPLOYMENT DISPUTES ›

VERSIONS

Feb 04, 2013 onwards

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

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.

‹ 2130. APPROVAL PROCEDURES FOR DAY-TRADING ACCOUNTS | UP | 2150. IMPROPER USE OF CUSTOMERS' SECURITIES OR FUNDS; PROHIBITION AGAINST GUARANTEES AND SHARING IN ACCOUNTS ›

VERSIONS

Dec 15, 2010 onwards

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

(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.

‹ 2140. INTERFERING WITH THE TRANSFER OF CUSTOMER ACCOUNTS IN THE CONTEXT OF EMPLOYMENT DISPUTES

UP

2165. FINANCIAL EXPLOITATION OF SPECIFIED ADULTS ›

VERSIONS

Apr 03, 2017 onwards

2165. Financial Exploitation of Specified Adults

(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.

‹ 2150. IMPROPER USE OF CUSTOMERS' SECURITIES OR FUNDS; PROHIBITION AGAINST GUARANTEES AND SHARING IN ACCOUNTS | UP | 2200. COMMUNICATIONS AND DISCLOSURES ›

VERSIONS

Mar 17, 2022 onwards

2210. Communications with the Public

(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 by SR-NASD-92-32 eff. Nov. 16, 1992.
Amended by SR-NASD-90-28 eff. June 1 & Nov. 1, 1991.
Amended by SR-NASD-88-40 eff. Mar. 1, 1989.
Amended by SR-NASD-79-5 eff. Nov. 13, 1980 & Jan. 21, 1981.
Amended eff. Aug. 2, 1983; June 5, 1987; July 1, 1988; June 26, 1990; Sept. 13, 1991.

Selected Notices: 74-16, 77-10, 77-34, 78-46, 79-24, 80-40, 80-63, 88-20, 88-64, 88-65, 89-11, 89-22, 90-14, 90-62, 91-26, 91-79, 92-27, 92-36, 92-56, 93-36, 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.

‹ 2200. COMMUNICATIONS AND DISCLOSURES UP 2211. COMMUNICATIONS WITH THE PUBLIC ABOUT VARIABLE LIFE INSURANCE AND VARIABLE ANNUITIES ›

VERSIONS

Aug 16, 2019 onwards

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

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.

‹ 2210. COMMUNICATIONS WITH THE PUBLIC UP 2212. USE OF INVESTMENT COMPANIES RANKINGS IN RETAIL COMMUNICATIONS ›

2212. Use of Investment Companies Rankings in Retail Communications

(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.

‹ 2211. COMMUNICATIONS WITH THE PUBLIC ABOUT VARIABLE LIFE INSURANCE AND VARIABLE ANNUITIES | UP | 2213. REQUIREMENTS FOR THE USE OF BOND MUTUAL FUND VOLATILITY RATINGS ›

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

(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.

‹ 2212. USE OF INVESTMENT COMPANIES RANKINGS IN RETAIL COMMUNICATIONS UP 2214. REQUIREMENTS FOR THE USE OF INVESTMENT ANALYSIS TOOLS ›

VERSIONS

Jan 09, 2017 onwards

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.

‹ 2213. REQUIREMENTS FOR THE USE OF BOND MUTUAL FUND VOLATILITY RATINGS UP 2215. COMMUNICATIONS WITH THE PUBLIC REGARDING SECURITY FUTURES ›

VERSIONS

Jan 22, 2018 onwards

2215. Communications with the Public Regarding Security Futures

(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.

‹ 2214. REQUIREMENTS FOR THE USE OF INVESTMENT ANALYSIS TOOLS UP 2216. COMMUNICATIONS WITH THE PUBLIC ABOUT COLLATERALIZED MORTGAGE OBLIGATIONS (CMOS) ›

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.

‹ 2215. COMMUNICATIONS WITH THE PUBLIC REGARDING SECURITY FUTURES UP 2220. OPTIONS COMMUNICATIONS ›

2220. Options Communications

(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.

‹ 2216. COMMUNICATIONS WITH THE PUBLIC ABOUT COLLATERALIZED MORTGAGE OBLIGATIONS (CMOS) UP 2230. CUSTOMER ACCOUNT STATEMENTS AND CONFIRMATIONS ›

VERSIONS

Dec 01, 2014 onwards

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) a "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 9600Series, 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.

‹ 2230. CUSTOMER ACCOUNT STATEMENTS AND CONFIRMATIONS UP 2232. CUSTOMER CONFIRMATIONS ›

2232. Customer Confirmations

(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.

‹ 2231. CUSTOMER ACCOUNT STATEMENTS UP 2240. CONFLICTS OF INTEREST ›

VERSIONS

May 14, 2018 onwards

2241. Research Analysts and Research Reports

(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.

‹ 2240. CONFLICTS OF INTEREST UP 2242. DEBT RESEARCH ANALYSTS AND DEBT RESEARCH REPORTS ›

VERSIONS

Aug 16, 2019 onwards

2242. 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 debt research analyst account to trade in a manner inconsistent with such research analyst's most recently published recommendation;

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

(L) restrict or limit activities by debt 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 debt research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

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

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

(c) Content and Disclosure in Debt Research Reports

(1) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that:

(A) purported facts in its debt research reports are based on reliable information; and

(B) any recommendation or rating 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 or rating.

(2) A member that employs a rating system must clearly define in each debt 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 debt research report limited to the analysis of an issuer of a debt security that includes a rating of the subject company the percentage of all subject companies rated by the member to which the member would assign a "buy," "hold" or "sell" rating.

(B) A member must disclose in each debt 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) of this Rule 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 debt research report is less than 15 calendar days after the most recent calendar quarter.

(3) If a debt research report limited to the analysis of an issuer of a debt security contains a rating for the subject company, and the member has assigned a rating to such subject company for at least one year, the debt research report must show each date on which a member has assigned a rating and the rating assigned on such date. The member must include this information for the period that the member has assigned any rating or for a three-year period, whichever is shorter.

(4) A member must disclose in any debt research report at the time of publication or distribution of the report:

(A) if the debt research analyst or a member of the debt research analyst's household has a financial interest in the debt or equity securities of the subject company (including, without limitation, any option, right, warrant, future, long or short position), and the nature of such interest;

(B) if the debt research analyst has received compensation based upon (among other factors) the member's investment banking, sales and trading or principal trading 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 debt research report (or the end of the second most recent month if the publication 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 debt 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 trades or may trade as principal in the debt securities (or in related derivatives) that are the subject of the debt research report;

(G) if the debt research analyst received any compensation from the subject company in the previous 12 months; and

(H) any other material conflict of interest of the debt research analyst or member that the debt research analyst or an associated person of the member with the ability to influence the content of a debt research report knows or has reason to know at the time of the publication or distribution of a debt research report.

(5) A member or debt research analyst will not be required to make a disclosure required by paragraph (c)(4) of this Rule to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions.

(6) Except as provided in subparagraph (7), the disclosures required by this paragraph (c) must be presented on the front page of debt research reports or the front page must refer to the page on which the disclosures are found. Electronic debt 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 debt 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 must include a hyperlink 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 also may include a web address of the member where the disclosures can be found.

(d) Disclosure in Public Appearances

(1) A debt research analyst must disclose in public appearances:

(A) if the debt research analyst or a member of the debt 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, to the extent the debt 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;

(C) if the debt research analyst received any compensation from the subject company in the previous 12 months;

(D) if, to the extent the debt 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 debt research report, was, a client of the member. In such cases, the debt research analyst also must disclose the types of services provided to the subject company, if known by the debt research analyst; or

(E) any other material conflict of interest of the debt research analyst or member that the debt research analyst knows or has reason to know at the time of the public appearance.

(2) A member or debt 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.

(3) Members must maintain records of public appearances by debt research analysts sufficient to demonstrate compliance by those debt 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) of this Rule, members and debt research analysts must comply with all applicable disclosure provisions of Rule 2210 and the federal securities laws.

(f) Distribution of Member Research Reports

A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that a debt research report is not distributed selectively to 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 debt research report.

(g) Distribution of Third-Party Debt Research Reports

(1) A member may not distribute third-party debt research if it knows or has reason to know such research is not objective or reliable.

(2) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that any third-party debt research report it distributes contains no untrue statement of material fact and is otherwise not false or misleading. For the purposes of this paragraph (g)(2) only, a member's obligation to review a third-party debt research report extends to any untrue statement of material fact or any false or misleading information that:

(A) should be known from reading the debt research report; or

(B) is known based on information otherwise possessed by the member.

(3) A member must accompany any third-party debt 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 debt research report provider or the subject company of a third-party debt research report, including the disclosures required by paragraphs (c)(4)(C), (c)(4)(F) and (c)(4)(H) of this Rule.

(4) A member shall not be required to review a third-party debt research report to determine compliance with paragraph (g)(2) of this Rule if such debt research report is an independent third-party debt research report.

(5) A member shall not be considered to have distributed a third-party debt research report for the purposes of paragraph (g)(3) where the research is an independent third-party debt research report and 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 debt research on the solicited debt security and the customer requests such independent debt research.

(6) A member must ensure that a third-party debt 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 debt research report.

(h) Exemption for Members with Limited Investment Banking Activity

The provisions of paragraphs (b)(2)(A)(i), (b)(2)(B), (b)(2)(C) (with respect to investment banking), (b)(2)(D)(i), (b)(2)(E) (with respect to investment banking), (b)(2)(G) and (b)(2)(H)(i) and (iii) of this Rule 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)(H)(i) and (iii) of this Rule, such members must establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons, including persons engaged in principal trading or sales and trading activities, who might be biased in their judgment or supervision. For the purposes of this paragraph (h), the term "investment banking services transactions" includes 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)(i), (b)(2)(B), (b)(2)(C), (b)(2)(D)(i), (b)(2)(E), (b)(2)(G) and (b)(2)(H)(i) and (iii) of this Rule.

(i) Exemption for Limited Principal Trading Activity

The provisions of paragraphs (b)(2)(A)(ii) and (iii), (b)(2)(B), (b)(2)(C) (with respect to sales and trading and principal trading), (b)(2)(D)(ii) and (iii), (b)(2)(E) (with respect to principal trading), (b)(2)(G) and (b)(2)(H)(ii) and (iii) of this Rule shall not apply to members where (1) in absolute value on an annual basis, the member's trading gains or losses on principal trades in debt securities are $15 million or less over the previous three years, on average per year; and (2) the member employs fewer than 10 debt traders; provided, however, that with respect to paragraph (b)(2)(H)(ii) and (iii) of this Rule, such members must establish information barriers or other institutional safeguards reasonably designed to ensure debt research analysts are insulated from pressure by persons engaged in principal trading or sales and trading activities or other persons who might be biased in their judgment or supervision. 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)(ii) and (iii), (b)(2)(B), (b)(2)(C), (b)(2)(D)(ii) and (iii), (b)(2)(E), (b)(2)(G) and (b)(2)(H)(ii) and (iii) of this Rule.

(j) Exemption for Debt Research Reports Provided to Institutional Investors

(1) Except as provided in paragraphs (j)(2) and (j)(3) of this Rule, the provisions of this Rule shall not apply to the distribution of a debt research report to:

(A) A qualified institutional buyer where, pursuant to Rule 2111(b):

(i) the member or associated person has a reasonable basis to believe that the qualified institutional buyer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and

(ii) such qualified institutional buyer has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to Rule 2111 and such affirmation covers transactions in debt securities; so long as the member has provided written disclosure to the qualified institutional buyer that the member may provide debt research reports that are intended for institutional investors and that are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors. If the qualified institutional buyer does not contact the member to request that such institutional debt research not be provided, the member may reasonably conclude that the qualified institutional buyer has consented to receiving debt institutional research reports; or

(B) a person that meets the definition of "institutional account" in Rule 4512(c); provided that such person, prior to receipt of a debt research report, has affirmatively notified the member in writing that it wishes to receive institutional debt research and forego treatment as a retail investor for the purposes of this Rule.

(2) Notwithstanding paragraph (j)(1) of this Rule, a member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest described in paragraphs (b)(2)(A)(i), (b)(2)(H) (with respect to pressuring), (b)(2)(I), (b)(2)(K), (b)(2)(L), (b)(2)(M), (b)(2)(N) and Supplementary Material .02(a) of this Rule.

(3) Notwithstanding paragraph (j)(1) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must establish, maintain and enforce written policies and procedures reasonably designed to comply with paragraphs (g)(1), (g)(2), (g)(4) and (g)(6) of this Rule.

(4) Debt research reports provided to institutional investors pursuant to this exemption ("institutional debt research") must disclose prominently on the first page that:

(A) "This document is intended for institutional investors and is not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors."

(B) If applicable, "The views expressed in this report may differ from the views offered in [Firm's] debt research reports prepared for retail investors."

(C) If applicable, "This report may not be independent of [Firm's] proprietary interests. [Firm] trades the securities covered in this report for its own account and on a discretionary basis on behalf of certain clients. Such trading interests may be contrary to the recommendation(s) offered in this report."

(5) Notwithstanding paragraph (j)(4) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must disclose prominently the disclosures required by paragraphs (j)(4)(A) and (j)(4)(C) of this Rule.

(6) A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors. A member may not rely on this exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor.

(7) This paragraph (j) does not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.

(k) 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. FINRA interprets paragraph (b)(2)(L)(i) of this Rule to prohibit in pitch materials any information about a member's debt research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable debt 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 debt 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.

.02 Restrictions on Communications with Customers and Internal Personnel

(a) Consistent with the requirements of paragraph (b)(2)(M) of this Rule, no debt 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, among other things, require that any written or oral communication by a debt 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.

.03 Information Barriers between Research Analysts and Trading Desk Personnel

(a) FINRA interprets paragraph (b)(1)(C) of this Rule to, among other things, require members to establish, maintain and enforce written policies and procedures reasonably designed to prohibit:

(1) Sales and trading and principal trading personnel attempting to influence a debt research analyst's opinion or views for the purpose of benefiting the trading position of the firm, a customer or a class of customers; and

(2) Debt research analysts identifying or recommending specific potential trading transactions to sales and trading or principal trading personnel that are inconsistent with such debt research analyst's currently published debt research reports, or disclosing the timing of, or material investment conclusions in, a pending debt research report.

(b) The following communications between debt research analysts and sales and trading or principal trading personnel are permitted:

(1) Sales and trading and principal trading personnel may communicate customers' interests to a debt research analyst, so long as the debt research analyst does not respond by publishing debt research for the purpose of benefiting the trading position of the firm, a customer or a class of customers;

(2) Debt research analysts may provide customized analysis, recommendations or trade ideas to sales and trading and principal trading personnel and customers, provided that any such communications are not inconsistent with the analyst's currently published or pending debt research, and that any subsequently published debt research is not for the purpose of benefiting the trading position of the firm, a customer or a class of customers;

(3) Sales and trading and principal trading personnel may seek the views of debt research analysts regarding the creditworthiness of the issuer of a debt security and other information regarding an issuer of a debt security that is reasonably related to the price/performance of the debt security, so long as, with respect to any covered issuer, such information is consistent with the debt research analyst's published debt research report and consistent in nature with the types of communications that a debt research analyst might have with customers. In determining what is consistent with the debt research analyst's published debt research, a member may consider the context, including that the investment objectives or time horizons being discussed differ from those underlying the debt research analyst's published views; and

(4) Debt research analysts may seek information from sales and trading and principal trading personnel regarding a particular bond instrument, current prices, spreads, liquidity and similar market information relevant to the debt research analyst's valuation of a particular debt security.

(c) Communications between debt research analysts and sales and trading or principal trading personnel that are not related to sales and trading, principal trading or debt research activities may take place without restriction, unless otherwise prohibited.

.04 Disclosure of Compensation Received by Affiliates. A member may satisfy the disclosure requirement in paragraph (c)(4)(D) of this Rule with respect to receipt of non-investment banking services compensation by an affiliate by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation. In addition, a member may satisfy the disclosure requirement in paragraph (c)(4)(C) of this Rule with respect to the receipt of investment banking compensation from a foreign sovereign by a non-U.S. affiliate of the member by implementing written policies and procedures reasonably designed to prevent the debt research analyst and associated persons of the member with the ability to influence the content of debt research reports from directly or indirectly receiving information from the non-U.S. affiliate as to whether such non-U.S. affiliate received or expects to receive such compensation from the foreign sovereign. However, a member must disclose compensation received by its affiliates from the subject company (including any foreign sovereign) in the past 12 months when the debt research analyst or an associated person with the ability to influence the content of a debt research report has actual knowledge that an affiliate received such compensation during that time period.

.05 Submission of Sections of a Draft Research Report for Factual Review.

Consistent with the requirements of paragraphs (b)(2)(B) and (N) of this Rule, sections of a draft debt research report may be provided to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or to the subject company for factual review, if:

(a) the sections of the draft debt research report submitted do not contain the research summary, recommendation or rating;

(b) a complete draft of the debt research report is provided to legal or compliance personnel before sections of the report are submitted to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company; and

(c) if, after submitting sections of the draft debt research report to non-investment banking personnel, non-principal trading personnel, non-sales and trading personnel or the subject company, the research department intends to change the proposed rating or recommendation, 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 debt research report for three years after publication.

.06 Distribution of Member Research Products. With respect to paragraph (f) of this Rule, a member may provide different debt research products and services to different classes of customers. For example, a member may offer one debt research product for those with a long-term investment horizon ("investor research") and a different debt 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 debt research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member label a debt research product with substantially the same content as a different debt research product as a means to allow certain customers to trade in advance of other customers. In addition, a member that provides different debt research products and services for different customers must inform its other customers that receive a research product that its alternative debt research products and services may reach different conclusions or recommendations that could impact the price of the debt 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.

.07 Ability to Influence the Content of a Debt Research Report. For the purposes of this Rule, an associated person with the ability to influence the content of a debt research report is an associated person who is required to review the content of the debt research report or has exercised authority to review or change the debt research report prior to publication or distribution. This term does not include legal or compliance personnel who may review a debt research report for compliance purposes but are not authorized to dictate a particular recommendation or rating.

.08 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. 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 written policies and procedures required by this Rule or related Supplementary Material.

.09 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 debt 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.

.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.

.11 Distribution of Institutional Debt Research During Transition Period. A member may distribute institutional debt research to any person that meets the definition of "institutional account" in Rule 4512(c), other than a natural person, for a period of up to one-year after July 16, 2015 ("the transition period"). After the transition period, a member must have obtained the necessary consent in either paragraph (j)(1)(A) or (j)(1)(B) to distribute institutional debt research to a person. Natural persons that qualify as an institutional account under Rule 4512(c) must provide affirmative written consent to receive institutional debt research during the year transition period and thereafter. This Supplementary Material .11 shall automatically sunset at the end of the transition period.

.12 Distribution of Institutional Debt Research to Non-U.S. Investors. The requirements of paragraphs (j)(1)(A) and (B) of this Rule shall not apply to the distribution of an institutional debt research report by a non-U.S. affiliate of a member to a non-U.S. investor, provided that:

(a) The non-U.S. investor is not a customer of the member;

(b) The non-U.S. investor is a customer of the non-U.S. affiliate of the member; and

(c) The non-U.S. affiliate of the member has a reasonable basis to believe that the customer meets the definition of "institutional account" in Rule 4512(c).

.13 Distribution of Institutional Debt Research for Informational Purposes

(a) A member may distribute institutional debt research reports to the persons described in paragraph (c) of this Supplementary Material .13 for informational purposes unrelated to investing in debt securities, provided that the member does not distribute the reports prior to their publication and the member has disclosed that:

(1) The member may provide the recipient debt research reports that were prepared for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors; and

(2) The institutional debt research reports would be provided only for informational purposes and not for the purpose of making an investment decision related to debt securities.

(b) If the person receiving institutional debt research pursuant to this Supplementary Material .13 does not contact the member to request that such institutional debt research not be provided, the member may reasonably conclude that the person has consented to receiving debt institutional research according to the terms of this Supplementary Material .13.

(c) Institutional debt research may be distributed for informational purposes unrelated to investing in debt securities pursuant to this Supplementary Material .13 to:

(1) Regulators for regulatory purposes;

(2) Academics for academic purposes;

(3) Issuers for the purpose of enhancing knowledge of their industry and competitors and market and economic factors; and

(4) Media organizations for news gathering purposes.

.14 Public Appearances by Research Analysts. A member or debt research analyst will not be required to make a disclosure required by paragraph (d) of this Rule where attendance at the public appearance is limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Members must maintain records of public appearances by debt research analysts sufficient to demonstrate that attendance at the public appearance was limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Such records must be maintained for at least three years from the date of the public appearance.

Amended by SR-FINRA-2016-017 eff. July 16, 2016;
Adopted by SR-FINRA-2014-048, SR-FINRA-2016-008, and SR-FINRA-2016-013 eff. July 16, 2016.

Selected Notice: 15-31

2251. Processing and Forwarding of Proxy and Other Issuer-Related Materials

(a) A member shall process and forward promptly all information as required by this Rule and applicable SEC rules regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member carries the account in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner.

(1) Equity Securities

For an equity security, the member, subject to paragraph (e) of this Rule and applicable SEC rules, shall process and forward:

(A) all proxy material, as provided in paragraph (c) of this Rule, that is furnished to the member by the issuer of the securities or a stockholder of such issuer; and

(B) all annual reports, information statements and other material sent to stockholders that are furnished to the member by the issuer of the securities.

(2) Debt Securities

For a debt security other than a municipal security, the member, subject to paragraph (e) of this Rule and applicable SEC rules, shall make reasonable efforts to process and forward any communication, document, or collection of documents pertaining to the issue that:

(A) was prepared by or on behalf of, the issuer, or was prepared by or on behalf of, the trustee of the specific issue of the security; and

(B) contains material information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices.

(b) No member shall give a proxy to vote stock that is registered in its name, except as required or permitted under the provisions of paragraphs (c) or (d) of this Rule, unless such member is the beneficial owner of such stock.

(c)(1) Whenever an issuer or stockholder of such issuer soliciting proxies shall, subject to paragraph (e) of this Rule and applicable SEC rules, timely furnish to a member:

(A) sufficient copies of all soliciting material that such person is sending to registered holders, and

(B) satisfactory assurance that he or she will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation, such member shall process and transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) that is in its possession or control and registered in a name other than the name of the beneficial owner, all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and processing and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEA Rule 17a-4.

(2) Notwithstanding the provisions of paragraph (c)(1) of this Rule, a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange of which it is a member provided that the records of the member clearly indicate the procedure it is following.

(3) This paragraph (c) shall not apply to beneficial owners residing outside of the United States, although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(d)(1) A member may give a proxy to vote any stock registered in its name if such member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

(2) A member that has in its possession or within its control stock registered in the name of another member and that desires to process and transmit signed proxies pursuant to the provisions of paragraph (c) of this Rule, shall obtain the requisite number of signed proxies from such holder of record.

(3) Notwithstanding the foregoing,

(A) any member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and

(B) any designated investment adviser may vote such proxies.

(e)(1) As required in paragraph (a) of this Rule, a member must process and forward promptly the material set forth in paragraph (a)(1), in connection with an equity security, or must make reasonable efforts to process and forward promptly the material set forth in paragraph (a)(2), in connection with a debt security, provided that the member:

(A) is furnished with sufficient copies of the material (e.g., annual reports, information statements or other material sent to security holders) by the issuer, stockholder, or trustee;

(B) is requested by the issuer, stockholder, or trustee to process and forward the material to security holders; and,

(C) receives satisfactory assurance that it will be reimbursed, consistent with Rule 2251.01 and applicable SEC rules, by such issuer, stockholder, or trustee for all out-of-pocket expenses, including reasonable clerical expenses.

(2) This paragraph (e) shall not apply to beneficial owners residing outside of the United States although members may voluntarily comply with the provisions hereof in respect to such persons if they so desire.

(f) For purposes of this Rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act, or registered as an investment adviser under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.

(1) For purposes of this Rule, the term "state" shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act (as the same may be amended from time to time).

(2) The written designation must be signed by the beneficial owner; be addressed to the member; and include the name of the designated investment adviser.

(3) Members that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act, or with a state as an investment adviser under the laws of such state, and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(4) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the member.

(g) The Board of Governors for the guidance of members is authorized to establish a suggested rate of reimbursement of members for expenses incurred in connection with processing and transmitting the proxy solicitation to the beneficial owners of the securities pursuant to paragraph (c) of this Rule or in processing and transmitting information statements or other material to the beneficial owners of securities pursuant to paragraph (e) of this Rule.

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

.01 Approved Rates of Reimbursement

(a) The following approved rates of reimbursement for expenses incurred in processing and forwarding proxy material, annual reports, information statements and other material shall be considered reasonable rates of reimbursement. In addition to the charges specified in this Supplementary Material, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

(1) Basic Processing and Intermediary Unit Fees

(A) Definitions: For purposes of this Supplementary Material:

(i) the term "nominee" shall mean a broker or bank subject to SEA Rule 14b-1 or Rule 14b-2, respectively;

(ii) the term "intermediary" shall mean a proxy service provider that coordinates the distribution of proxy or other materials for multiple nominees.

(B)

(i) For each set of proxy material, i.e., proxy statement, form of proxy and annual report when processed as a unit, a Processing Unit Fee based on the following schedule according to the number of nominee accounts through which the issuer's securities are beneficially owned:

a. 50 cents for each account up to 10,000 accounts;

b. 47 cents for each account above 10,000 accounts, up to 100,000 accounts;

c. 39 cents for each account above 100,000 accounts, up to 300,000 accounts;

d. 34 cents for each account above 300,000 accounts, up to 500,000 accounts;

e. 32 cents for each account above 500,000 accounts.

To clarify, under this schedule, a member may charge the issuer the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers. References in this Supplementary Material to the number of accounts means the number of accounts holding securities of the issuer at any nominee that is providing distribution services without the services of an intermediary, or when an intermediary is involved, the aggregate number of nominee accounts with beneficial ownership in the issuer served by the intermediary.

(ii) In the case of a meeting for which an opposition proxy has been furnished to security holders, the Processing Unit Fee shall be $1.00 per account, in lieu of the fees in the above schedule.

(C) The following are supplemental fees for intermediaries:

(i) $22.00 for each nominee served by the intermediary that has at least one account beneficially owning shares in the issuer;

(ii) an Intermediary Unit Fee for each set of proxy material, based on the following schedule according to the number of nominee accounts through which the issuer's securities are beneficially owned:

a. 14 cents for each account up to 10,000 accounts;

b. 13 cents for each account above 10,000 accounts, up to 100,000 accounts;

c. 11 cents for each account above 100,000 accounts, up to 300,000 accounts;

d. 9 cents for each account above 300,000 accounts, up to 500,000 accounts;

e. 7 cents for each account above 500,000 accounts.

To clarify, under this schedule, a member may charge the issuer the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers.

(iii) For special meetings, the Intermediary Unit Fee shall be based on the following schedule, in lieu of the fees described in (ii) above:

a. 19 cents for each account up to 10,000 accounts;

b. 18 cents for each account above 10,000 accounts, up to 100,000 accounts;

c. 16 cents for each account above 100,000 accounts, up to 300,000 accounts;

d. 14 cents for each account above 300,000 accounts, up to 500,000 accounts;

e. 12 cents for each account above 500,000 accounts.

To clarify, under this schedule, a member may charge the issuer the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers. For purposes of this paragraph, a special meeting is a meeting other than the issuer's meeting for the election of directors.

(iv) In the case of a meeting for which an opposition proxy has been furnished to security holders, the Intermediary Unit Fee shall be 25 cents per account, with a minimum fee of $5,000.00 per soliciting entity, in lieu of the fees described in (ii) or (iii) above, as the case may be. Where there are separate solicitations by management and an opponent, the opponent is to be separately billed for the costs of its solicitation.

(2) Charges for Proxy Follow-Up Material

For each set of follow-up material, a Processing Unit Fee of 40 cents per account, except for those relating to an issuer's annual meeting for the election of directors, for which the Processing Unit Fee shall be 20 cents per account.

(3) Charge for Providing Beneficial Ownership Information

Six and one-half cents per name of non-objecting beneficial owner ("NOBO") provided to the issuer pursuant to the issuer's request. Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay in addition the following fee to the agent:

(A) 10 cents per name for the first 10,000 names or portion thereof;

(B) 5 cents per name for additional names up to 100,000 names; and

(C) 4 cents per name above 100,000;

with a minimum fee of $100 per requested list.

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEA Rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

When an issuer requests beneficial ownership information as of a date which is the record date for an annual or special meeting or a solicitation of written shareholder consent, the issuer may ask to eliminate names holding more or less than a specified number of shares, or names of shareholders that have already voted, and the issuer may not be charged a fee for the NOBO names so eliminated. In all other cases the issuer may be charged for all the names in the NOBO list.

(4) Charges for Interim Report, Post Meeting Report and Other Material

For interim reports, annual reports if processed separately, post meeting reports, or other material, a Processing Unit Fee of 15 cents per account.

(5) Preference Management Fees

With respect to each account for which the nominee has eliminated the need to send materials in paper format through the mails (or by courier service), a Preference Management Fee in the following amount:

(A) For each set of proxy material described in paragraph (a)(1)(B) of this Supplementary Material, 32 cents; provided, however, that if the account is a Managed Account (as defined in paragraph (a)(7) of this Supplementary Material), the Preference Management Fee shall be 16 cents.

(B) For each set of material described in either paragraph (a)(2) or paragraph (a)(4) of this Supplementary Material, the Preference Management Fee shall be 10 cents.

To clarify, the Preference Management Fee is in addition to, and not in lieu of, the other fees provided for in this Supplemetary Material.

(6) Notice and Access Fees

When an issuer elects to utilize Notice and Access for a proxy distribution, there is an incremental fee based on all nominee accounts through which the issuer's securities are beneficially owned as follows:

(A) 25 cents for each account up to 10,000 accounts;

(B) 20 cents for each account over 10,000 accounts, up to 100,000 accounts;

(C) 15 cents for each account over 100,000 accounts, up to 200,000 accounts;

(D) 10 cents for each account over 200,000 accounts, up to 500,000 accounts;

(E) 5 cents for each account over 500,000 accounts.

To clarify, under this schedule, a member may charge the issuer the tier one rate for the first 10,000 accounts, or portion thereof, with decreasing rates applicable only on additional accounts in the additional tiers.

Follow up notices will not incur an incremental fee for Notice and Access.

The Notice and Access fees set forth herein will also be charged with respect to the distribution of investment company shareholder reports pursuant to the SEC's "notice and access" rules in relation to such distributions. The Notice and Access fee will not be charged for any account with respect to which an investment company pays a Preference Management Fee in connection with a distribution of investment company shareholder reports.

In calculating the rates at which the issuer will be charged Notice and Access fees for investment company shareholder report distributions, all accounts holding shares of any class of stock of the applicable issuer eligible to receive the same distribution will be aggregated in determining the appropriate pricing tier under this Supplementary Material .01(a)(6).

No incremental fee will be imposed for fulfillment transactions (i.e., a full package sent to a notice recipient at the recipient's request), although out of pocket costs such as postage will be passed on as in ordinary distributions.

(7) Fee Exclusion in Certain Circumstances

Notwithstanding any other provision of this Supplementary Material, no fee shall be imposed for a nominee account that is a Managed Account (as hereinafter defined) and contains five or fewer shares or units of the security involved.

For purposes of this Supplementary Material, the term "Managed Account" shall mean an account at a nominee which is invested in a portfolio of securities selected by a professional adviser, and for which the account holder is charged a separate asset-based fee for a range of services which may include ongoing advice, custody and execution services. The adviser can be either employed by or affiliated with the nominee, or a separate investment advisor contracted for the purpose of selecting investment portfolios for the managed account. Requiring that investments or changes to the account be approved by the client shall not preclude an account from being a "Managed Account," nor shall the fact that commissions or transaction-based charges are imposed in addition to the asset-based fee.

Notwithstanding any other provision of this Supplementary Material, no fee shall be imposed for any nominee account which contains only a fractional share, i.e., less than one share or unit of the security involved.

Further, notwithstanding any other provision of this Supplementary Material, no fee shall be imposed for a nominee account that contains only shares or units of the securities involved that were transferred to the account holder by the member at no cost.

(8) Enhanced Brokers' Internet Platform Fee

During the period ending December 31, 2018, there shall be a supplemental fee of 99 cents for each new account that elects, and each full package recipient among a brokerage firm's accounts that converts to, electronic delivery while having access to an Enhanced Brokers' Internet Platform ("EBIP"). This fee does not apply to electronic delivery consents captured by issuers (for example, through an open-enrollment program), nor to positions held in Managed Accounts (as defined in paragraph (a)(7) of this Supplementary Material) nor to accounts voted by investment managers using electronic voting platforms. This is a one-time fee, meaning that an issuer may be billed this fee by a particular member only once for each account covered by this Rule. Billing for this fee should be separately indicated on the issuer's invoice and must await the next proxy or consent solicitation by the issuer that follows the triggering election of electronic delivery by an eligible account. Accounts receiving a notice pursuant to the use of notice and access by the issuer, and accounts to which mailing is suppressed by householding, will not trigger the fee under this Supplementary Material.

To qualify under this Supplementary Material, an EBIP must provide notices of upcoming corporate votes (including record and shareholder meeting dates) and the ability to access proxy materials and a voting instruction form, and cast the vote, through the investor's account page on the member's website without an additional log-in.

Any member that is not also a member of the NYSE with a qualifying EBIP must provide notice thereof to FINRA, including the date such EBIP became operational, and any limitations on the availability of the EBIP to its customers.

Conversions to electronic delivery by accounts with access to an EBIP need to be tracked for the purpose of reporting the activity to FINRA when requested, as do records of marketing efforts to encourage account holders to use the EBIP. In addition, records need to be maintained and reported to FINRA when requested regarding the proportion of non-institutional accounts that vote proxies after being provided access to an EBIP.

(b) Any charges for forwarding pursuant to this Supplementary Material must be reasonable. Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically enumerated in paragraph (a) of this Supplementary Material without the prior notification to and consent of the person soliciting proxies or the company.

(c) For purposes of this Rule, members are not required to process and transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, members may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with SEA Rule 14b-1 and other applicable SEC rules.

.02 Investment Adviser Registration. For purposes of this Rule, members may verify registration of an investment adviser through the use of the Investment Adviser Registration Depository ("IARD").

Amended by SR-FINRA-2021-032 eff. Dec. 7, 2021.
Amended by SR-FINRA-2013-056 eff. Jan. 1, 2014.
Amended by SR-FINRA-2010-002 eff. Feb. 15, 2010.
Amended by SR-FINRA-2009-066 eff. Feb. 15, 2010.
Amended by SR-NASD-2002-124 eff. June 16 2003.
Amended by SR-NASD-2003-19 eff. Feb 12, 2003.
Amended by SR-NASD-2002-11 eff. July 9, 2002.
Amended by SR-NASD-95-06 eff. May 5, 1995.
Amended by SR-NASD-91-20 eff. Sept. 14, 1991.
Amended by SR-NASD-86-10 eff. May 30, 1986; Aug, 7, 1991.
Amended by SR-NASD-86-09 eff. Apr. 29, 1986.
Amended by SR-NASD-85-07 eff. April 1, 1985.
Amended eff. Mar. 31, 1974; May 1, 1980.
Adopted eff. Jan. 2, 1969.

Selected Notices: 85-26, 86-35, 86-46, 91-57, 92-17, 95-45, 02-33, 03-26, 09-72, 14-03, 22-02.

‹ 2250. PROXY MATERIALS UP 2260. DISCLOSURES ›

VERSIONS

Dec 07, 2021 onwards

2261. Disclosure of Financial Condition

(a) A member shall make available to inspection by any bona fide regular customer, upon request, the information relative to such member's financial condition as disclosed in its most recent balance sheet prepared either in accordance with such member's usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder. In lieu of making such balance sheet available to inspection, a member may deliver the balance sheet to the requesting bona fide regular customer in paper or electronic form; provided that, with respect to electronic delivery, the customer must consent to receive the balance sheet in electronic form.

(b) Any member who is a party to an open transaction or who has on deposit cash or securities of another member shall deliver upon written request of the other member, in paper or electronic form, a statement of its financial condition as disclosed in its most recent balance sheet prepared either in accordance with such member's usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder.

(c) As used in paragraph (a) of this Rule, the term "customer" means any person who, in the regular course of such member's business, has cash or securities in the possession of such member.

Amended by SR-FINRA-2009-081, eff. June 14, 2010.

Selected Notice: 10-21.

‹ 2260. DISCLOSURES UP 2262. DISCLOSURE OF CONTROL RELATIONSHIP WITH ISSUER ›

2262. Disclosure of Control Relationship with Issuer

A member controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

Amended by SR-FINRA-2009-044 eff. Dec. 14, 2009.

Selected Notice: 09-60.

‹ 2261. DISCLOSURE OF FINANCIAL CONDITION | UP | 2263. ARBITRATION DISCLOSURE TO ASSOCIATED PERSONS SIGNING OR ACKNOWLEDGING FORM U4 ›

2263. Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4

A member shall provide an associated person with the following written statement whenever the associated person is asked, pursuant to FINRA Rule 1010, to sign an initial or amended Form U4, or otherwise provide written (which may be electronic) acknowledgment of an amendment to the Form U4:

The Form U4 contains a predispute arbitration clause. It is in item 5 of Section 15A of the Form U4. You should read that clause now. Before signing the Form U4, you should understand the following:

(1) You are agreeing to arbitrate any dispute, claim or controversy that may arise between you and your firm, or a customer, or any other person that is required to be arbitrated under the rules of the self-regulatory organizations with which you are registering. This means you are giving up the right to sue a member, customer, or another associated person in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) A claim alleging employment discrimination in violation of a statute is not required to be arbitrated under FINRA rules. Such a claim may be arbitrated at FINRA only if the parties have agreed to arbitrate it, either before or after the dispute arose. The rules of other arbitration forums may be different.

(3) A dispute arising under a whistleblower statute that prohibits the use of predispute arbitration agreements is not required to be arbitrated under FINRA rules. Such a dispute may be arbitrated only if the parties have agreed to arbitrate it after the dispute arose.

(4) A party alleging a sexual assault claim or sexual harassment claim that has agreed to arbitrate before the dispute arose may elect post dispute not to arbitrate such a claim under the Code. Such a claim may be arbitrated if the parties have agreed to arbitrate it after the dispute arose.

(5) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(6) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(7) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(8) The panel of arbitrators may include arbitrators who were or are affiliated with the securities industry or public arbitrators, as provided by the rules of the arbitration forum in which a claim is filed.

(9) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

Amended by SR-FINRA-2022-012 eff. May 13, 2022.
Amended by SR-FINRA-2021-003 eff. Feb. 23, 2021.
Amended by SR-FINRA-2011-067 eff. May 21, 2012.
Amended by SR-FINRA-2009-019 eff. Sep. 25, 2009.
Amended by SR-NASD-2006-046 eff. April 03, 2006.
Adopted by SR-NASD-99-08 eff. Jan. 18, 2000.

Selected Notices: 99-96, 09-40, 12-21, 22-15.

‹ 2262. DISCLOSURE OF CONTROL RELATIONSHIP WITH ISSUER UP 2264. MARGIN DISCLOSURE STATEMENT ›

VERSIONS

May 13, 2022 onwards

2264. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in paper or electronic form, and in a separate document (or contained by itself on a separate page as part of another document), the margin disclosure statement specified in this paragraph (a). In addition, any member that permits non-institutional customers either to open accounts online or to engage in transactions in securities online must post such margin disclosure statement on the member's Web site in a clear and conspicuous manner.

Margin Disclosure Statement

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.** A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities or assets in your account(s).
- **The firm can force the sale of securities or other assets in your account(s).** If the equity in your account falls below the maintenance margin requirements, or the firm's higher "house" requirements, the firm can sell the securities or other assets in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.
- **The firm can sell your securities or other assets without contacting you.** Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities or other assets in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.** Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.
- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.** These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).
- **You are not entitled to an extension of time on a margin call.** While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

(b) Members shall, with a frequency of not less than once a calendar year, deliver individually, in paper or electronic form, the disclosure statement described in paragraph (a) or the following bolded disclosures to all non-institutional customers with margin accounts:

Securities purchased on margin are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.**

- **The firm can force the sale of securities or other assets in your account(s).**
- **The firm can sell your securities or other assets without contacting you.**
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.**
- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.**
- **You are not entitled to an extension of time on a margin call.**

The annual disclosure statement required pursuant to this paragraph (b) may be delivered within or as part of other account documentation, and is not required to be provided in a separate document or on a separate page.

(c) In lieu of providing the disclosures specified in paragraphs (a) and (b), a member may provide to the customer and, to the extent required under paragraph (a) post on its Web site, an alternative disclosure statement, provided that the alternative disclosures shall be substantially similar to the disclosures specified in paragraphs (a) and (b).

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 4512(c).

Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2009-52 eff. Dec. 14, 2009.
Amended by SR-NASD-2002-69 eff. July 1, 2002.
Adopted by SR-NASD-2000-55 eff. June 4, 2001.

Selected Notices: 01-31, 02-35, 09-60.

‹ 2263. ARBITRATION DISCLOSURE TO ASSOCIATED PERSONS SIGNING OR ACKNOWLEDGING FORM U4 | UP | 2265. EXTENDED HOURS TRADING RISK DISCLOSURE ›

VERSIONS

Dec 05, 2011 onwards

2265. Extended Hours Trading Risk Disclosure

(a) No member shall permit a customer to engage in extended hours trading unless the member has furnished to the customer, individually, in paper or electronic form, a disclosure statement highlighting the risks specific to extended hours trading. In addition, any member that permits customers either to open accounts on-line in which such customer may engage in extended hours trading or to engage in extended hours trading in securities on-line, must post an extended hours trading risk disclosure statement on the member's Web site in a clear and conspicuous manner.

Model Extended Hours Trading Risk Disclosure Statement

You should consider the following points before engaging in extended hours trading. "Extended hours trading" means trading outside of "regular trading hours." "Regular trading hours" generally means the time between 9:30 a.m. and 4:00 p.m. Eastern Standard Time.

- Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular trading hours. As a result, your order may only be partially executed, or not at all.
- Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular trading hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price when engaging in extended hours trading than you would during regular trading hours.
- Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular trading hours, or upon the opening the next morning. As a result, you may receive an inferior price when engaging in extended hours trading than you would during regular trading hours.
- Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours trading system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.
- Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after regular trading hours. Similarly, important financial information is frequently announced outside of regular trading hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.
- Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

(b) In lieu of providing the model disclosure statement set forth in paragraph (a), a member may furnish customers with an alternative disclosure statement, provided that such alternative disclosure statement is substantially similar to the model disclosure statement set forth in paragraph (a) addressing, at a minimum, the above six risks.

(c) Members must consider whether to develop and include additional disclosures in the extended hours trading risk disclosure statement as necessary to address product-specific or other specific needs. For example, members may need to develop additional disclosures to address such issues as exchange-traded funds, options trading, options exercises, and the effect of stock splits or dividend payments during extended-hours trading.

Adopted by SR-FINRA-2009-021 eff. Mar. 27, 2009.

2266. SIPC Information

All members, except those members: (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; or (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

Amended by SR-FINRA-2009-016 eff. Aug. 17, 2009.
Amended by SR-NASD-2007-036 eff. Nov 6, 2007.
Adopted by SR-NASD-2006-124 eff. Nov 6, 2007.

Selected Notice: 07-29, 09-33.

‹ 2265. EXTENDED HOURS TRADING RISK DISCLOSURE UP 2267. INVESTOR EDUCATION AND PROTECTION ›

2267. Investor Education and Protection

(a) Except as otherwise provided in this Rule, each member shall once every calendar year provide in writing (which may be electronic) to each customer the following items of information:

(1) FINRA BrokerCheck Hotline Number;

(2) FINRA Web site address; and

(3) A statement as to the availability to the customer of an investor brochure that includes information describing FINRA BrokerCheck.

(b) Notwithstanding the requirement in paragraph (a) of this Rule,

(1) any member whose contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member and thereafter does not carry customer accounts or hold customer funds and securities may furnish a customer with the information required by paragraph (a) of this Rule at or prior to the time of the customer's initial purchase, in lieu of once every calendar year; and

(2) any member that does not have customers or is a party to a carrying agreement where the carrying firm member complies with paragraph (a) of this Rule is exempt from the requirements of this Rule.

Amended by SR-FINRA-2008-062 eff. Aug. 17, 2009.
Amended by SR-NASD-97-75 eff. Oct. 14, 1997.
Adopted by SR-NASD-97-10 eff. Sept. 10, 1997.

Selected Notice: 09-33.

‹ 2266. SIPC INFORMATION | UP | 2268. REQUIREMENTS WHEN USING PREDISPUTE ARBITRATION AGREEMENTS FOR CUSTOMER ACCOUNTS ›

2268. Requirements When Using Predispute Arbitration Agreements for Customer Accounts

(a) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form.

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(1) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(3) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(4) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(5) The panel of arbitrators may include a minority of arbitrators who were or are affiliated with the securities industry.

(6) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(7) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(b)(1) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(2) Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(c)(1) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to paragraph (b)(2) above, the member must provide a copy to the customer by the earlier date required by this paragraph (c)(1) or by paragraph (b)(2).

(2) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(d) No predispute arbitration agreement shall include any condition that:

(1) limits or contradicts the rules of any self-regulatory organization;

(2) limits the ability of a party to file any claim in arbitration;

(3) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(4) limits the ability of arbitrators to make any award.

(e) If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.

(f) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is

denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(g) The provisions of this Rule shall become effective on May 1, 2005. The provisions of paragraph (c) shall apply to all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before May 1, 2005 are subject to the provisions of this Rule in effect at the time the agreement was signed.

Amended by SR-FINRA-2011-024 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-052 eff. Dec. 5, 2011.
Amended by SR-NASD-98-74 eff. June 1, 2005.
Amended by SR-NASD-92-28 eff. Oct. 28, 1992.
Adopted by SR-NASD-89-19 eff. May 10, 1989.

Selected Notices: 89-21, 89-58, 92-37, 92-65, 95-16, 95-85, 05-09, 05-32, 11-19.

‹ 2267. INVESTOR EDUCATION AND PROTECTION UP 2269. DISCLOSURE OF PARTICIPATION OR INTEREST IN PRIMARY OR SECONDARY DISTRIBUTION ›

2269. Disclosure of Participation or Interest in Primary or Secondary Distribution

A member who is acting as a broker for a customer or for both such customer and some other person, or a member who is acting as a dealer and who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such member is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

Amended by SR-FINRA-2009-044 eff. Dec. 14, 2009.

Selected Notice: 09-60.

‹ 2268. REQUIREMENTS WHEN USING PREDISPUTE ARBITRATION AGREEMENTS FOR CUSTOMER ACCOUNTS

UP

2270. DAY-TRADING RISK DISCLOSURE STATEMENT ›

2270. Day-Trading Risk Disclosure Statement

(a) Except as provided in paragraph (b), 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 each customer, individually, in paper or electronic form, the disclosure statement specified in this paragraph (a). In addition, any member that is promoting a day-trading strategy, directly or indirectly, must post such disclosure statement on the member's Web site in a clear and conspicuous manner.

Day-Trading Risk Disclosure Statement

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a "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.

Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses. Further, certain evidence indicates that an investment of less than $50,000 will significantly impair the ability of a day trader to make a profit. Of course, an investment of $50,000 or more will in no way guarantee success.

Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

Day trading requires knowledge of a firm's operations. You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures. Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction. In addition to normal market risks, you may experience losses due to system failures.

Day trading will generate substantial commissions, even if the per trade cost is low. Day trading involves aggressive trading, and generally you will pay commissions on each trade. The total daily commissions that you pay on your trades will add to your losses or significantly reduce your earnings. For instance, assuming that a trade costs $16 and an average of 29 transactions are conducted per day, an investor would need to generate an annual profit of $111,360 just to cover commission expenses.

Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.

Potential Registration Requirements. Persons providing investment advice for others or managing securities accounts for others may need to register as either an "Investment Adviser" under the Investment Advisers Act of 1940 or as a "Broker" or "Dealer" under the Securities Exchange Act of 1934. Such activities may also trigger state registration requirements.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, individually, in paper or electronic form, prior to opening the account, and post on its Web site, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with FINRA's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changes are recommended by FINRA, shall be withheld from use until any changes specified by FINRA have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, FINRA approval. The member must provide with each filing the anticipated date of first use.

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

(1) "Day-trading strategy" shall have the meaning provided in Rule 2130(e).

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

(3) "Promoting a day-trading strategy" shall have the meaning provided in Rule 2130.01.

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

.01 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.

.02 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 2130 (Approval Procedures for Day-Trading Accounts); 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.
Amended by SR-NASD-2002-69 eff. July 1, 2002.
Adopted by SR-NASD-99-41 eff. Oct. 16, 2000.

Selected Notices: 00-62, 02-35, 09-72.

‹ 2269. DISCLOSURE OF PARTICIPATION OR INTEREST IN PRIMARY OR SECONDARY DISTRIBUTION

UP

2272. SALES AND OFFERS OF SALES OF SECURITIES ON MILITARY INSTALLATIONS ›

VERSIONS

Feb 04, 2013 onwards

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

(a) Military Installations

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

(b) Disclosures

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

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

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

(c) Suitability

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

(d) Fees and Compensation

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

Amended by SR-FINRA-2015-050 eff. Mar. 30, 2016.
Adopted by SR-FINRA-2015-009 eff. Mar. 30, 2016.

Selected Notice: 15-34

‹ 2270. DAY-TRADING RISK DISCLOSURE STATEMENT UP 2273. EDUCATIONAL COMMUNICATION RELATED TO RECRUITMENT PRACTICES AND ACCOUNT TRANSFERS ›

2273. Educational Communication Related to Recruitment Practices and Account Transfers

(a) Educational Communication Delivery Requirement

A member that hires or associates with a registered person shall provide to a former customer of the registered person, individually, in paper or electronic form, an educational communication prepared by FINRA when (1) the member, directly or through that registered person, individually contacts the former customer of that registered person to transfer assets or (2) the former customer of that registered person, absent individualized contact, transfers assets to an account assigned, or to be assigned, to the registered person at the member.

(b) Means and Timing of Delivery

(1) A member shall deliver the communication in paragraph (a) at the time of first individualized contact with a former customer by the registered person or the member regarding the former customer transferring assets to the member.

(A) If the contact is in writing, the written communication required in paragraph (a) must accompany the written communication. If the contact is by electronic communication, the member may hyperlink directly to the educational communication.

(B) If the contact is oral, the member or registered person must notify the former customer orally that an educational communication that includes important considerations in deciding whether to transfer assets to the member will be provided not later than three business days after the contact. The educational communication must be sent within three business days from such oral contact or with any other documentation sent to the former customer related to transferring assets to the member, whichever is earlier.

(2) If a former customer attempts to transfer assets to an account assigned, or to be assigned, to the registered person at the member, but no individualized contact with the former customer by the registered person or member occurs before the former customer seeks to transfer assets, the member shall deliver the educational communication in paragraph (a) to the former customer with the account transfer approval documentation.

(3) The delivery of the communication required by paragraph (a) shall apply for a period of three months following the date the registered person begins employment or associates with the member.

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

.01 Definition. For the purpose of this Rule, the term "former customer" shall mean any customer that had a securities account assigned to a registered person at the registered person's previous firm. This term shall not include an account of a non-natural person that meets the definition of an institutional account pursuant to Rule 4512(c).

.02 Express Rejection by Former Customer. The requirement in paragraph (a) shall not apply when the former customer who the member, directly or through that registered person, individually contacts to transfer assets expressly states that he or she is not interested in transferring assets to the member. If the former customer subsequently decides to transfer assets to the member without further individualized contact within the period of three months following the date the registered person begins employment or associates with the member, then the requirements of paragraph (b)(2) shall apply.

Adopted by SR-FINRA-2015-057 eff. Nov. 11, 2016.

Selected Notice: 16-18.

‹ 2272. SALES AND OFFERS OF SALES OF SECURITIES ON MILITARY INSTALLATIONS UP 2300. SPECIAL PRODUCTS ›

2310. Direct Participation Programs

(a) Definitions

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

(1) Affiliate — when used with respect to a member or sponsor, shall mean any person which controls, is controlled by, or is under common control with, such member or sponsor and includes:

(A) any partner, officer or director (or person performing similar functions) of (i) such member or sponsor, or (ii) a person which beneficially owns 50% or more of the equity interest in, or has the power to vote 50% or more of the voting interest in, such member or sponsor;

(B) any person which beneficially owns or has the right to acquire 10% or more of the equity interest in or has the power to vote 10% or more of the voting interest in (i) such member or sponsor, or (ii) a person which beneficially owns 50% or more of the equity interest in, or has the power to vote 50% or more of the voting interest in, such member or sponsor;

(C) any person with respect to which such member or sponsor, the persons specified in subparagraph (A) or (B), and the immediate families of partners, officers or directors (or persons performing similar functions) specified in subparagraph (A), or other person specified in subparagraph (B), in the aggregate beneficially own or have the right to acquire 10% or more of the equity interest or have the power to vote 10% or more of the voting interest;

(D) any person an officer of which is also a person specified in subparagraph (A) or (B) and any person a majority of the board of directors of which is comprised of persons specified in subparagraph (A) or (B); or

(E) any person controlled by a person or persons specified in subparagraphs (A), (B), (C) or (D).

(2) Cash available for distribution — cash flow less amount set aside for restoration or creation of reserves.

(3) Cash flow — cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

(4) Direct participation program (program) — a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein and in any rules or regulations adopted pursuant hereto the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company including separate accounts, registered pursuant to the Investment Company Act.

(5) Dissenting limited partner — a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by FINRA, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under FINRA rules during the period in which the offer is outstanding. Such objection in writing shall be filed with the party responsible for tabulating the votes or tenders.

(6) Equity interest — when used with respect to a corporation, means common stock and any security convertible into, exchangeable or exercisable for common stock, and, when used with respect to a partnership, means an interest in the capital or profits or losses of the partnership.

(7) Fair market net worth — total assets computed at fair market value less total liabilities.

(8) Limited partner or investor in a limited partnership — the purchaser of an interest in a direct participation program that is a limited partnership who is not involved in the day-to-day management of the limited partnership and bears limited liability.

(9) Limited partnership — an unincorporated association that is a direct participation program organized as a limited partnership whose partners are one or more general partners and one or more limited partners, which conforms to the provisions of the Revised Uniform Limited Partnership Act or the applicable statute that regulates the organization of such partnership.

(10) Limited partnership rollup transaction — a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which:

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before January 1, 1991, by the SEC under Section 11A of the Exchange Act.

(B) any of the investors' limited partnership securities are not, as of the date of the filing, reported under a transaction reporting plan declared effective before January 1, 1991, by the SEC under Section 11A of the Exchange Act.

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue. Notwithstanding the foregoing definition, a "limited partnership rollup transaction" does not include:

(i) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the SEC determines appropriate;

(ii) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled or exchanged pursuant to the terms of the pre-existing limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(iii) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act;

(iv) a transaction that involves only issuers that are not required to register or report under Section 12 of the Exchange Act, both before and after the transaction;

(v) a transaction, except as the SEC may otherwise provide for by rule for the protection of investors, involving the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of the general partner or sponsor, if:

a. such action is approved by not less than 66 2/3 percent of the outstanding units of each of the participating limited partnerships; and

b. as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the pre-existing partnership agreements; or

(vi) a transaction, except as the SEC may otherwise provide for by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before January 1, 1991, by the SEC under Section 11A of the Exchange Act; if:

a. such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

b. the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(vii) a transaction involving only entities registered under the Investment Company Act or any Business Development Company as defined in Section 2(a)(48) of that Act.

(11) Management fee — a fee paid to the sponsor, general partner(s), their affiliates, or other persons for management and administration of a direct participation program.

(12) Organization and offering expenses — expenses incurred in preparing a direct participation program for registration and subsequently offering interests in the program to the public, including all forms of compensation paid to underwriters, broker-dealers, or affiliates thereof in connection with the offering of the program.

(13) Participant — the purchaser of an interest in a direct participation program.

(14) Person — any natural person, partnership, corporation, association or other legal entity.

(15) Prospectus — a prospectus as defined by Section 2(10) of the Securities Act, as amended, an offering circular as described in Securities Act Rule 256 or, in the case of an intrastate offering, any document utilized for the purpose of announcing the offer and sale of securities to the public.

(16) Registration statement — a registration statement as defined by Section 2(8) of the Securities Act, as amended, a notification on Form 1-A filed with the SEC pursuant to the provisions of Securities Act Rule 255 and, in the case of an intrastate offering, any document initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any state.

(17) Solicitation expenses — direct marketing expenses incurred by a member, in connection with a limited partnership rollup transaction such as telephone calls, broker-dealer fact sheets, members' legal and other fees related to the solicitation, as well as direct solicitation compensation to members.

(18) Sponsor — a person who directly or indirectly provides management services for a direct participation program whether as general partner, pursuant to contract or otherwise.

(19) Transaction costs — costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

(b) Requirements

(1) Application

No member or person associated with a member shall participate in a public offering of a direct participation program, a limited partnership rollup transaction or, where expressly provided below, a real estate investment trust as defined in Rule 2231(d)(4)("REIT"), except in accordance with this paragraph (b).

(2) Suitability

(A) A member or person associated with a member shall not underwrite or participate in a public offering of a direct participation program unless standards of suitability have been established by the program for participants therein and such standards are fully disclosed in the prospectus and are consistent with the provisions of subparagraph (B).

(B) In recommending to a participant the purchase, sale or exchange of an interest in a direct participation program, a member or person associated with a member shall:

(i) have reasonable grounds to believe, on the basis of information obtained from the participant concerning his investment objectives, other investments, financial situation and needs, and any other information known by the member or associated person, that:

a. the participant is or will be in a financial position appropriate to enable him to realize to a significant extent the benefits described in the prospectus, including the tax benefits where they are a significant aspect of the program;

b. the participant has a fair market net worth sufficient to sustain the risks inherent in the program, including loss of investment and lack of liquidity; and

c. the program is otherwise suitable for the participant; and

(ii) maintain in the files of the member documents disclosing the basis upon which the determination of suitability was reached as to each participant.

(C) Notwithstanding the provisions of subparagraphs (A) and (B) hereof, no member shall execute any transaction in direct participation program in a discretionary account without prior written approval of the transaction by the customer.

(D) Subparagraphs (A) and (B), and, only in situations where the member is not affiliated with the direct participation program, subparagraph (C) shall not apply to:

(i) a secondary public offering of or a secondary market transaction in a unit, depositary receipt, or other interest in a direct participation program that is listed on a national securities exchange; or

(ii) an initial public offering of a unit, depositary receipt or other interest in a direct participation program for which an application for listing on a national securities exchange has been approved by such exchange and the applicant makes a good faith representation that it believes such listing on an exchange will occur within a reasonable period of time following the formation of the program.

(3) Disclosure

(A) Prior to participating in a public offering of a direct participation program or REIT, a member or person associated with a member shall have reasonable grounds to believe, based on information made available to him by the sponsor through a prospectus or other materials, that all material facts are adequately and accurately disclosed and provide a basis for evaluating the program.

(B) In determining the adequacy of disclosed facts pursuant to subparagraph (A) hereof, a member or person associated with a member shall obtain information on material facts relating at a minimum to the following, if relevant in view of the nature of the program:

(i) items of compensation;

(ii) physical properties;

(iii) tax aspects;

(iv) financial stability and experience of the sponsor;

(v) the program's conflict and risk factors; and

(vi) appraisals and other pertinent reports.

(C) For purposes of subparagraphs (A) or (B) hereof, a member or person associated with a member may rely upon the results of an inquiry conducted by another member or members, provided that:

(i) the member or person associated with a member has reasonable grounds to believe that such inquiry was conducted with due care;

(ii) the results of the inquiry were provided to the member or person associated with a member with the consent of the member or members conducting or directing the inquiry; and

(iii) no member that participated in the inquiry is a sponsor of the program or an affiliate of such sponsor.

(D) Prior to executing a purchase transaction in a direct participation program or a REIT, a member or person associated with a member shall inform the prospective participant of all pertinent facts relating to the liquidity and marketability of the program or REIT during the term of the investment. Included in the pertinent facts shall be information regarding whether the sponsor has offered prior programs or REITs in which disclosed in the offering materials was a date or time period at which the program or REIT might be liquidated, and whether the prior program(s) or REIT(s) in fact liquidated on or around that date or during the time period; provided however, this subparagraph (D) shall not apply to an initial or secondary public offering of or a secondary market transaction in a unit, depositary receipt or other interest in a direct participation program that meets the criteria in paragraph (b)(2)(D)(i) or (ii).

(4) Organization and Offering Expenses

(A) No member or person associated with a member shall underwrite or participate in a public offering of a direct participation program or REIT if the organization and offering expenses are not fair and reasonable, taking into consideration all relevant factors.

(B) In determining the fairness and reasonableness of organization and offering expenses that are deemed to be in connection with or related to the distribution of the public offering for purposes of subparagraph (A) hereof, the arrangements shall be presumed to be unfair and unreasonable if:

(i) organization and offering expenses, as defined in paragraph (b)(4)(C), in which a member or an affiliate of a member is a sponsor, exceed an amount that equals fifteen percent of the gross proceeds of the offering;

(ii) the total amount of all items of compensation from whatever source, including compensation paid from offering proceeds and in the form of "trail commissions," payable to underwriters, broker-dealers, or affiliates thereof exceeds an amount that equals ten percent of the gross proceeds of the offering (excluding securities purchased through the reinvestment of dividends);

(iii) any compensation in connection with an offering is to be paid to underwriters, broker-dealers, or affiliates thereof out of the proceeds of the offering prior to the release of such proceeds from escrow, provided, however, that any such payment from sources other than proceeds of the offering shall be made only on the basis of bona fide transactions;

(iv) commissions or other compensation are to be paid or awarded either directly or indirectly, to any person engaged by a potential investor for investment advice as an inducement to such advisor to advise the purchaser of interests in a particular program or REIT, unless such person is a registered broker-dealer or a person associated with such a broker-dealer;

(v) the program or REIT provides for compensation of an indeterminate nature to be paid to members or persons associated with members for sales of the program or REIT, or for services of any kind rendered in connection with or related to the distribution thereof, including, but not necessarily limited to, the following: a percentage of the management fee, a profit sharing arrangement, brokerage commissions, an over-riding royalty interest, a net profits interest, a percentage of revenues, a reversionary interest, a working interest, a security or right to acquire a security having an indeterminate value, or other similar incentive items;

(vi) the program or REIT charges a sales load or commission on securities that are purchased through the reinvestment of dividends, unless the registration statement registering the securities under the Securities Act became effective prior to August 6, 2008; or

(vii) the member has received reimbursement for due diligence expenses that are not included in a detailed and itemized invoice, unless the amount of the reimbursement is included in the calculation of underwriting compensation as a non-accountable expense allowance, which when aggregated with all other such non-accountable expenses, does not exceed three percent of offering proceeds.

(C) The organization and offering expenses subject to the limitations in paragraph (b)(4)(B)(i) above include the following:

(i) issuer expenses that are reimbursed or paid for with offering proceeds, including overhead expenses, which issuer expenses include, but are not limited to, expenses for:

a. assembling, printing and mailing offering materials, processing subscription agreements, generating advertising and sales materials;

b. legal and accounting services provided to the sponsor or issuer;

c. salaries and non-transaction-based compensation paid to employees or agents of the sponsor or issuer for performing services for the issuer;

d. transfer agents, escrow holders depositories, engineers and other experts; and

e. registration and qualification of securities under federal and state law, including taxes and fees and FINRA fees;

(ii) underwriting compensation as defined in Rule 5110(j)(22) including payments:

a. to any wholesaling or retailing firm that is engaged in the solicitation, marketing, distribution or sales of the program or REIT securities;

b. to any registered representative of a member who receives transaction-based compensation in connection with the offering, except to the extent that such compensation has been included in a. above;

c. to any registered representative who is engaged in the solicitation, marketing, distribution or sales of the program or REIT securities, except:

1. to the extent that such compensation has been included in a. above;

2. for a registered representative whose functions in connection with the offering are solely and exclusively clerical or ministerial; and

3. for a registered representative whose sales activities are *de minimis* and incidental to his or her clerical or ministerial job functions; or

d. for training and education meetings, legal services provided to a member in connection with the offering, advertising and sales material generated by the member and contributions to conferences and meetings held by non-affiliated members for their registered representatives.

(iii) due diligence expenses incurred when a member affirmatively discharges its responsibilities to ensure that all material facts pertaining to a program or REIT are adequately and accurately disclosed in the offering document.

(D) Notwithstanding paragraphs (b)(4)(C)(ii)b. and c. above, for every program or REIT filed with the Corporate Financing Department (the "Department") for review, the Department shall, based upon the information provided, make a determination as to whether some portion of a registered representative's non-transaction-based compensation should not be deemed to be underwriting compensation if the registered representative is either:

(i) a dual employee of a member and the sponsor, issuer or other affiliate with respect to a program or REIT with ten or fewer registered representatives engaged in wholesaling, in which instance the Department may make such determination with respect to the ten or fewer registered representatives engaged in wholesaling; or

(ii) a dual employee of a member and the sponsor, issuer or other affiliate who is one of the top ten highest paid executives based on non-transaction-based compensation in any program or REIT.

(E) All items of compensation paid by the program or REIT directly or indirectly from whatever source to underwriters, broker-dealers, or affiliates thereof, including, but not limited to, sales commissions, wholesaling fees, due diligence expenses, other underwriter's expenses, underwriter's counsel's fees, securities or rights to acquire securities, rights of first refusal, consulting fees, finder's fees, investor relations fees, and any other items of compensation for services of any kind or description, which are deemed to be in connection with or related to the public offering, shall be taken into consideration in computing the amount of compensation for purposes of determining compliance with the provisions of subparagraphs (A) and (B).

(F) The determination of whether compensation paid to underwriters, broker-dealers, or affiliates thereof is in connection with or related to a public offering, for purposes of this subparagraph (4), shall be made on the basis of such factors as the timing of the transaction, the consideration rendered, the investment risk, and the role of the member or affiliate in the organization, management and direction of the enterprise in which the sponsor is involved.

(i) An affiliate of a member which acts or proposes to act as a general partner, associate general partner, or other sponsor of a program or REIT shall be presumed to be bearing investment risk for purposes of this paragraph (b) if the affiliate:

a. is subject to potential liability as a general partner to the same extent as any other general partner;

b. is not indemnified against potential liability as a general partner to any greater or different extent than any other general partner for its actions or those of any other general partner;

c. has a net worth equal to at least five percent of the net proceeds of the public offering or $1.0 million, whichever is less; provided, however, that the computation of the net worth shall not include an interest in the program offered but may include net worth applied to satisfy the requirements of this paragraph (b) with respect to other programs or REITs; and

d. agrees to maintain net worth as required by subparagraph c. above under its control until the earlier of the removal or withdrawal of the affiliate as a general partner, associate general partner, or other sponsor, or the dissolution of the program or REIT.

(ii) For purposes of determining the factors to be utilized in computing compensation derived from securities received in connection with a public offering, the guidelines set forth in Rule 5110 shall govern to the extent applicable.

(G) Subject to the limitations on direct and indirect non-cash compensation provided under subparagraph (C), no member shall accept any cash compensation unless all of the following conditions are satisfied:

(i) all compensation is paid directly to the member in cash and the distribution, if any, of all compensation to the member's associated persons is controlled solely by the member;

(ii) the value of all compensation to be paid in connection with an offering is included as compensation to be received in connection with the offering for purposes of subparagraph (B);

(iii) arrangements relating to the proposed payment of all compensation are disclosed in the prospectus or similar offering document;

(iv) the value of all compensation paid in connection with an offering is reflected on the books and records of the recipient member as compensation received in connection with the offering; and

(v) no compensation paid in connection with an offering is directly or indirectly related to any non-cash compensation or sales incentive items provided by the member to its associated persons.

(5) Valuation for Customer Account Statements

A member shall not participate in a public offering of the securities of a direct participation program (DPP) that is not subject to the requirements of the Investment Company Act of 1940 or of a REIT unless the issuer of the DPP or REIT has agreed to disclose:

(A) a per share estimated value of the DPP or REIT security, developed in a manner reasonably designed to ensure it is reliable, in the DPP or REIT periodic reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act;

(B) an explanation of the method by which the per share estimated value was developed;

(C) the date of the valuation; and

(D) in a periodic or current report filed pursuant to Section 13(a) or 15(d) of the Exchange Act within 150 days following the second anniversary of breaking escrow and in each annual report thereafter, a per share estimated value:

(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;

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

(iii) accompanied by a written opinion or report by the issuer, delivered at least annually, that explains the scope of the review, the methodology used to develop the valuation or valuations, and the basis for the value or values reported.

(6) Participation in Rollups

(A) No member or person associated with a member shall participate in the solicitation of votes or tenders from limited partners in connection with a limited partnership rollup transaction, irrespective of the form of the resulting entity (i.e., a partnership, real estate investment trust or corporation), unless any compensation received by the member:

(i) is payable and equal in amount regardless of whether the limited partner votes affirmatively or negatively in the proposed limited partnership rollup transaction;

(ii) in the aggregate, does not exceed 2% of the exchange value of the newly created securities; and

(iii) is paid regardless of whether the limited partners reject the proposed limited partnership rollup transaction.

(B) No member or person associated with a member shall participate in the solicitation of votes or tenders from limited partners in connection with a limited partnership rollup transaction unless the general partner(s) or sponsor(s) proposing the limited partnership rollup transaction agrees to pay all solicitation expenses related to the limited partnership rollup transaction, including all preparatory work related thereto, in the event the limited partnership rollup transaction is rejected.

(C) No member or person associated with a member shall participate in any capacity in a limited partnership rollup transaction if the transaction is unfair or unreasonable.

(i) A limited partnership rollup transaction will be presumed not to be unfair or unreasonable if the limited partnership rollup transaction provides for the right of dissenting limited partners:

a. to receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the program that values the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing and in a manner consistent with the appropriate industry practice. Compensation to dissenting limited partners of limited partnership rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely tradeable securities; provided, however, that:

1. limited partnership rollup transactions which utilize debt instruments as compensation must provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest equal to at least 120% of the applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986;

2. limited partnership rollup transactions which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph 1., must limit total leverage to 70% of the appraised value of the assets;

3. all debt securities must have a term no greater than 8 years and provide for prepayment with 80% of the net proceeds of any sale or refinancing of the assets previously owned by the partnership entitles subject to the limited partnership rollup transaction or any part thereof; and

4. freely tradeable securities used as compensation to dissenting limited partners must be previously listed on a national securities exchange prior to the limited partnership rollup transaction, and the number of securities to be received in return for limited partnership interests must be determined in relation to the average last sale price of the freely tradeable securities in the 20-day period following the date of the meeting at which the vote on the limited partnership rollup transaction occurs. If the issuer of the freely tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be used as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For purposes of the preceding sentence, a sponsor or general partner is "affiliated" with the issuer of the freely tradeable securities if the sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the limited partnership rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this subparagraph.

b. to receive or retain a security with substantially the same terms and conditions as the security originally held. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

1. there is no material adverse change to dissenting limited partners' rights with respect to the business plan or the investment, distribution and liquidation policies of the limited partnership; and

2. the dissenting limited partners receive substantially the same rights, preferences and priorities as they had pursuant to the security originally held; or

c. to receive other comparable rights including, but not limited to:

1. approval of the limited partnership rollup transaction by 75% of the outstanding units of each of the individual participating limited partnerships and the exclusion of any individual limited partnership from the limited partnership rollup transaction which fails to reach the 75% threshold. The third-party appointed to tabulate votes and dissents pursuant to subparagraph (C)(ii)b.4. hereof shall submit the results of such tabulation to FINRA;

2. review of the limited partnership rollup transaction by an independent committee of persons not affiliated with the general partner(s) or sponsor. Whenever utilized, the independent committee:

A. shall be approved by a majority of the outstanding securities of each of the participating partnerships;

B. shall have access to the books and records of the partnerships;

C. shall prepare a report to the limited partners subject to the limited partnership rollup transaction that presents its findings and recommendations, including any minority views;

D. shall have the authority to negotiate the proposed transaction with the general partner or sponsor on behalf of the limited partners, but not the authority to approve the transaction on behalf of the limited partners;

E. shall not deliberate for a period longer than 60 days, although extensions will be permitted if unanimously agreed upon by the members of the independent committee or if approved by FINRA;

F. may be compensated and reimbursed by the limited partnerships subject to the limited partnership rollup transaction and shall have the ability to retain independent counsel and financial advisors to represent all limited partners at the limited partnerships' expense provided the fees are reasonable; and

G. shall be entitled to indemnification to the maximum extent permitted by law from the limited partnerships subject to the limited partnership rollup transaction from claims, causes of action or lawsuits related to any action or decision made in furtherance of their responsibilities; provided, however, that general partners or sponsors may also agree to indemnify the independent committee; or

3. any other comparable rights for dissenting limited partners proposed by general partners or sponsors, provided, however, that the general partner(s) or sponsor demonstrates to the satisfaction of FINRA or, if FINRA determines appropriate, to the satisfaction of an independent committee, that the rights proposed are comparable.

(ii) Regardless of whether a limited partnership rollup transaction is in compliance with subparagraph (C)(i), a limited partnership rollup transaction will be presumed to be unfair and unreasonable:

a. if the general partner(s):

1. converts an equity interest in any limited partnership(s) subject to a limited partnership rollup transaction for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to limited partners, into a voting interest in the new entity (provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89-12 may be converted);

2. fails to follow the valuation provisions, if any, in the limited partnership agreements of the subject limited partnerships when valuing their limited partnership interests; or

3. utilizes a future value of their equity interest in the limited partnership rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with subparagraph (C)(i)a., when determining their interest in the new entity;

b. as to voting rights, if:

1. the voting rights in the entity resulting from a limited partnership rollup transaction do not generally follow the original voting rights of the limited partnerships participating in the limited partnership rollup transaction; provided, however, that changes to voting rights may be effected if FINRA determines that such changes are not unfair or if the changes are approved by an independent committee;

2. a majority of the interests in an entity resulting from a limited partnership rollup transaction may not, without concurrence by the sponsor, general partner(s), board of directors, trustee, or similar governing entity, depending on the form of entity and to the extent not inconsistent with applicable state law, vote to:

A. amend the limited partnership agreement, articles of incorporation or by-laws, or indenture;

B. dissolve the entity;

C. remove the general partner, board of directors, trustee or similar governing entity, and elect a new general partner, board of directors, trustee or similar governing entity; or

D. approve or disapprove the sale of substantially all of the assets of the entity;

3. the general partner(s) or sponsor(s) proposing a limited partnership rollup transaction do not provide each limited partner with a document which instructs the limited partner on the proper procedure for voting against or dissenting from the transaction; or

4. the general partner(s) or sponsor(s) does not utilize an independent third party to receive and tabulate all votes and dissents in connection with the limited partnership rollup transaction, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs;

c. as to transaction costs, if:

1. transaction costs of a rejected limited partnership rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

A. the general partner(s) or sponsor(s) bear all transaction costs in proportion to the total number of abstentions and votes to reject the limited partnership rollup transaction; and

B. limited partners bear transaction costs in proportion to the number of votes to approve the limited partnership rollup transaction; or

2. individual limited partnerships that do not approve a limited partnership rollup transaction are required to pay any of the transaction costs, and the general partner or sponsor is not required to pay the transaction costs on behalf of the non-approving limited partnerships, in a limited partnership rollup transaction in which one or more limited partnerships determines not to approve the transaction, but where the transaction is consummated with respect to one or more approving limited partnerships; or

d. as to fees of general partners, if:

1. general partners are not prevented from receiving both unearned management fees discounted to a present value (if such fees were not previously provided for in the limited partnership agreement and disclosed to limited partners) and new asset-based fees;

2. property management fees and other general partner fees are inappropriate, unreasonable and more than, or not competitive with, what would be paid to third parties for performing similar services; or

3. changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

(c) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" for the purposes of this paragraph (c) shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of direct participation securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

(2) Restriction on Non-Cash Compensation

In connection with the sale and distribution of direct participation program or REIT securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Non-cash compensation arrangements must be consistent with the applicable requirements of SEA Rule 15l-1 ("Regulation Best Interest") and are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not conditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (c)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean a United States office of the offeror or the member holding the meeting, or a facility located in the vicinity of such office, or a United States regional location with respect to meetings of associated persons who work within that region or, with respect to meetings with direct participation programs or REITs, a United States location at which a significant or representative asset of the program or REIT is located;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (c)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (c)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by paragraphs (c)(2)(C) through (E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with paragraph (c)(2)(C) through (E).

(d) Exemptions

Pursuant to the Rule 9600 Series, FINRA may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

---

[1] The current annual amount fixed by the Board of Governors is $100.

Amended by SR-FINRA-2019-012. eff. Sept. 16, 2020.
Amended by SR-FINRA-2020-007 eff. June 30, 2020.
Amended by SR-FINRA-2019-009 eff. May 8, 2019.
Amended by SR-FINRA-2014-006 eff. April 11, 2016.
Amended by SR-FINRA-2009-046 eff. Aug. 17, 2009.
Amended by SR-FINRA-2009-016 eff. Aug. 17, 2009.
Amended by SR-NASD-2005-114 eff. Aug. 6, 2008.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2003-68 eff. April 7, 2003.
Amended by SR-NASD-00-13 eff. April 16, 2001.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-95-21 eff. July 11, 1995.
Amended by SR-NASD-95-19 eff. July 3, 1995.
Amended by SR-NASD-93-03 eff. Nov. 1, 1994.
Amended by SR-NASD-93-48 eff. Mar. 8, 1994.
Amended by SR-NASD-93-29 eff. June 23, 1993.
Amended by SR-NASD-91-24 eff. Aug. 19, 1991.
Amended by SR-NASD-84-10 eff. Feb. 1, 1989.
Amended by SR-NASD-86-22 eff. Jan. 1, 1989.
Amended by SR-NASD-86-21 eff. Sept. 15, 1986.
Amended by SR-NASD-85-26 eff. Nov. 5. 1985.
Amended by SR-NASD-84-2 eff. July 3, 1984.
Amended by SR-NASD-XX-XX eff. Jan. 17, 1984.
Amended by SR-NASD-82-21 eff. Nov. 8, 1982.
Amended SR-NASD-81-19 eff. Sept. 16, 1982.
Adopted by SR-NASD-77-8 eff. July 14, 1980.

Selected Notices: 73-50, 77-03, 78-12, 81-34, 82-14, 82-50, 82-51, 82-52, 83-13, 83-49, 84-28, 84-64, 85-17, 85-29, 86-66, 86-81, 88-88, 89-16, 91-56, 91-78, 93-15, 93-44, 94-24, 94-70, 95-63, 95-64, 03-53, 08-35, 09-33, 15-02, 20-10, 20-18.

‹ 2300. SPECIAL PRODUCTS UP 2320. VARIABLE CONTRACTS OF AN INSURANCE COMPANY ›

VERSIONS

Sep 16, 2020 onwards

2320. Variable Contracts of an Insurance Company

(a) Application

This Rule shall apply exclusively (and in lieu of Rule 2341) to the activities of members in connection with variable contracts, to the extent such activities are subject to regulation under the federal securities laws.

(b) Definitions

(1) The term "purchase payment" as used throughout this Rule shall mean the consideration paid at the time of each purchase or installment for or under the variable contract.

(2) The term "variable contracts" shall mean contracts providing for benefits or values which may vary according to the investment experience of any separate or segregated account or accounts maintained by an insurance company.

(3) The terms "affiliated member," "compensation," "cash compensation," "non-cash compensation" and "offeror" as used in paragraph (g) of this Rule shall have the following meanings:

(A) "Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

(B) "Compensation" shall mean cash compensation and non-cash compensation.

(C) "Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset based sales charge, loan, override, or cash employee benefit received in connection with the sale and distribution of variable contracts.

(D) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(E) "Offeror" shall mean an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act) of such entities.

(c) Receipt of Payment

No member shall participate in the offering or in the sale of a variable contract on any basis other than at a value to be determined following receipt of payment therefor in accordance with the provisions of the contract, and, if applicable, the prospectus, the Investment Company Act and applicable rules thereunder. Payments need not be considered as received until the contract application has been accepted by the insurance company, except that by mutual agreement it may be considered to have been received for the risk of the purchaser when actually received.

(d) Transmittal

Every member who receives applications and/or purchase payments for variable contracts shall transmit promptly to the issuer all such applications and at least that portion of the purchase payment required to be credited to the contract.

(e) Selling Agreements

No member who is a principal underwriter as defined in the Investment Company Act may sell variable contracts through another broker-dealer unless (1) such broker-dealer is a member, and (2) there is a sales agreement in effect between the parties. Such sales agreement must provide that the sales commission be returned to the issuing insurance company if the variable contract is tendered for redemption within seven business days after acceptance of the contract application.

(f) Redemption

No member shall participate in the offering or in the sale of a variable contract unless the insurance company, upon receipt of a request in proper form for partial or total redemption in accordance with the provisions of the contract undertakes to make prompt payment of the amounts requested and payable under the contract in accordance with the terms thereof, and, if applicable, the prospectus, the Investment Company Act and applicable rules thereunder.

(g) Member Compensation

In connection with the sale and distribution of variable contracts:

(1) Except as described below, no associated person of a member shall accept any compensation from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(A) the arrangement is agreed to by the member;

(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the SEC that applies to the specific fact situation of the arrangement;

(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of the FINRA rules; and

(D) the record keeping requirement in paragraph (g)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items as described in paragraphs (g)(4)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, and the nature and value of non-cash compensation received.

(4) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Notwithstanding the provisions of paragraph (g)(1), the following non-cash compensation arrangements are permitted provided that they are consistent with the applicable requirements of SEA Rule 15l-1 ("Regulation Best Interest"):

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA[1] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the record keeping requirement in paragraph (g)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (g)(4)(D);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (g)(4)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes variable contract securities, is based on the total production of associated persons with respect to all variable contract securities distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each variable contract security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the record keeping requirement in paragraph (g)(3) is satisfied.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (g)(4)(D).

[1] The current annual amount fixed by FINRA is $100.

Amended by SR-FINRA-2020-007 eff. June 30, 2020.
Amended by SR-FINRA-2016-026 eff. July 9, 2016.
Amended by SR-FINRA-2009-023 eff. Oct. 19, 2009.
Amended by SR-NASD-98-14 eff. April 1, 2000.
Amended by SR-NASD-97-35 eff. Jan. 1, 1999.
Amended eff. May 1, 1976.
Added eff. Feb. 8, 1971.

Selected Notices: 75-68, 88-17, 91-25, 91-68, 94-67, 95-56, 96-52, 96-86, 97-27, 97-48, 97-50, 98-75, 99-35, 99-55, 99-103, 00-44, 01-63, 09-50, 20-18.

‹ 2310. DIRECT PARTICIPATION PROGRAMS UP 2330. MEMBERS' RESPONSIBILITIES REGARDING DEFERRED VARIABLE ANNUITIES ›

VERSIONS

Jun 30, 2020 onwards

2330. Members' Responsibilities Regarding Deferred Variable Annuities

(a) General Considerations

(1) Application

This Rule applies to recommended purchases and exchanges of deferred variable annuities and recommended initial subaccount allocations. This Rule does not apply to reallocations among subaccounts made or to funds paid after the initial purchase or exchange of a deferred variable annuity. This Rule also does not apply to deferred variable annuity transactions made in connection with any tax-qualified, employer-sponsored retirement or benefit plan that either is defined as a "qualified plan" under Section 3(a)(12)(C) of the Exchange Act or meets the requirements of Internal Revenue Code Sections 403(b), 457(b), or 457(f), unless, in the case of any such plan, a member or person associated with a member makes recommendations to an individual plan participant regarding a deferred variable annuity, in which case the Rule would apply as to the individual plan participant to whom the member or person associated with the member makes such recommendations.

(2) Creation, Storage, and Transmission of Documents

For purposes of this Rule, documents may be created, stored, and transmitted in electronic or paper form, and signatures may be evidenced in electronic or other written form.

(3) Definitions

For purposes of this Rule, the term "registered principal" shall mean a person registered as a General Securities Sales Supervisor (Series 9/10), a General Securities Principal (Series 24) or an Investment Company Products/Variable Contracts Principal (Series 26), as applicable.

(b) Recommendation Requirements

(1) No member or person associated with a member shall recommend to any customer the purchase or exchange of a deferred variable annuity unless such member or person associated with a member has a reasonable basis to believe

(A) that the transaction is suitable in accordance with Rule 2111 and, in particular, that there is a reasonable basis to believe that

(i) the customer has been informed, in general terms, of various features of deferred variable annuities, such as the potential surrender period and surrender charge; potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59½; mortality and expense fees; investment advisory fees; potential charges for and features of riders; the insurance and investment components of deferred variable annuities; and market risk;

(ii) the customer would benefit from certain features of deferred variable annuities, such as tax-deferred growth, annuitization, or a death or living benefit; and

(iii) the particular deferred variable annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and riders and similar product enhancements, if any, are suitable (and, in the case of an exchange, the transaction as a whole also is suitable) for the particular customer based on the information required by paragraph (b)(2) of this Rule; and

(B) in the case of an exchange of a deferred variable annuity, the exchange also is consistent with the suitability determination required by paragraph (b)(1)(A) of this Rule, taking into consideration whether

(i) the customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living, or other contractual benefits), or be subject to increased fees or charges (such as mortality and expense fees, investment advisory fees, or charges for riders and similar product enhancements);

(ii) the customer would benefit from product enhancements and improvements; and

(iii) the customer has had another deferred variable annuity exchange within the preceding 36 months.

The determinations required by this paragraph shall be documented and signed by the associated person recommending the transaction.

(2) Prior to recommending the purchase or exchange of a deferred variable annuity, a member or person associated with a member shall make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing

assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.

(3) Promptly after receiving information necessary to prepare a complete and correct application package for a deferred variable annuity, a person associated with a member who recommends the deferred variable annuity shall transmit the complete and correct application package to an office of supervisory jurisdiction of the member.

(c) Principal Review and Approval

Prior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after an office of supervisory jurisdiction of the member receives a complete and correct application package, a registered principal shall review and determine whether he or she approves of the recommended purchase or exchange of the deferred variable annuity.

A registered principal shall approve the recommended transaction only if he or she has determined that there is a reasonable basis to believe that the transaction would be suitable based on the factors delineated in paragraph (b) of this Rule.

The determinations required by this paragraph shall be documented and signed by the registered principal who reviewed and then approved or rejected the transaction.

(d) Supervisory Procedures

In addition to the general supervisory and recordkeeping requirements of Rules 3110, 3120, 3130, 3150, and 4510 Series, a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in this Rule. The member also must (1) implement surveillance procedures to determine if any of the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws ("inappropriate exchanges") and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges.

(e) Training

Members shall develop and document specific training policies or programs reasonably designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of this Rule and that they understand the material features of deferred variable annuities, including those described in paragraph (b)(1)(A)(i) of this Rule.

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

.01 Depositing of Funds by Members Prior to Principal Approval. Under Rule 2330, a member that is permitted to maintain customer funds under SEA Rules 15c3-1 and 15c3-3 may, prior to the member's principal approval of the deferred variable annuity, deposit and maintain customer funds for a deferred variable annuity in an account that meets the requirements of SEA Rule 15c3-3.

.02 Treatment of Lump-Sum Payment for Purchases of Different Products. If a customer provides a member that is permitted to hold customer funds with a lump sum or single check made payable to the member (as opposed to being made payable to the insurance company) and requests that a portion of the funds be applied to the purchase of a deferred variable annuity and the rest of the funds be applied to other types of products, Rule 2330 would not prohibit the member from promptly applying those portions designated for purchasing products other than a deferred variable annuity to such use. A member that is not permitted to hold customer funds can comply with such requests only through its clearing firm that will maintain customer funds for the intended deferred variable annuity purchase in an account that meets the requirements of SEA Rule 15c3-3. In such circumstances, the checks would need to be made payable to the clearing firm.

.03 Forwarding of Checks/Funds to Insurer Prior to Principal Approval. Rule 2330 does not prohibit a member from forwarding a check made payable to the insurance company or, if the member is fully subject to SEA Rule 15c3-3, transferring funds for the purchase of a deferred variable annuity to the insurance company prior to the member's principal approval of the deferred variable annuity, as long as the member fulfills the following requirements: (a) the member must disclose to the customer the proposed transfer or series of transfers of the funds and (b) the member must enter into a written agreement with the insurance company under which the insurance company agrees that, until such time as it is notified of the member's principal approval and is provided with the application or is notified of the member's principal rejection, it will (1) segregate the member's customers' funds in a bank in an account equivalent to the deposit of those funds by a member into a "Special Account for the Exclusive Benefit of Customers" (set up as described in SEA Rules 15c3-3(k)(2)(i) and 15c3-3(f)) to ensure that the customers' funds will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of the member, insurance company, or bank where the insurance company deposits such funds or any creditor thereof or person claiming through them and hold those funds either as cash or any

instrument that a broker or dealer may deposit in its Special Reserve Account for the Exclusive Benefit of Customers, (2) not issue the variable annuity contract prior to the member's principal approval, and (3) promptly return the funds to each customer at the customer's request prior to the member's principal approval or upon the member's rejection of the application.

.04 Forwarding of Checks/Funds to IRA Custodian Prior to Principal Approval. A member is not prohibited from forwarding a check provided by the customer for the purpose of purchasing a deferred variable annuity and made payable to an IRA custodian for the benefit of the customer (or, if the member is fully subject to SEA Rule 15c3-3, funds) to the IRA custodian prior to the member's principal approval of the deferred variable annuity transaction, as long as the member enters into a written agreement with the IRA custodian under which the IRA custodian agrees (a) to forward the funds to the insurance company to complete the purchase of the deferred variable annuity contract only after it has been informed that the member's principal has approved the transaction and (b), if the principal rejects the transaction, to inform the customer, seek immediate instructions from the customer regarding alternative disposition of the funds (e.g., asking whether the customer wants to transfer the funds to another IRA custodian, purchase a different investment, or provide other instructions), and promptly implement the customer's instructions.

.05 Gathering of Information Regarding Customer Exchanges. Rule 2330 requires that the member or person associated with a member consider whether the customer has had another deferred variable annuity exchange within the preceding 36 months. Under this provision, a member or person associated with a member must determine whether the customer has had such an exchange at the member and must make reasonable efforts to ascertain whether the customer has had an exchange at any other broker-dealer within the preceding 36 months. An inquiry to the customer as to whether the customer has had an exchange at another broker-dealer within 36 months would constitute a "reasonable effort" in this context. Members shall document in writing both the nature of the inquiry and the response from the customer.

.06 Sharing of Office Space and/or Employees. Rule 2330 requires principal review and approval "[p]rior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing...." In circumstances where an insurance company and its affiliated broker-dealer share office space and/or employees who carry out both the principal review and the issuance process, FINRA will consider the application "transmitted" to the insurance company only when the broker-dealer's principal, acting as such, has approved the transaction, provided that the affiliated broker-dealer and the insurance company have agreed that the insurance company will not issue the contract prior to principal approval by the broker-dealer.

.07 Sharing of Information. Rule 2330 does not prohibit using the information required for principal review and approval in the issuance process, provided that the broker-dealer and the insurance company have agreed that the insurance company will not issue the contract prior to principal approval by the broker-dealer. For instance, the rule does not prohibit a broker-dealer from inputting information used as part of its suitability review into a shared database (irrespective of the media used for that database, i.e., paper or electronic) that the insurance company uses for the issuance process, provided that the broker-dealer and the insurance company have agreed that the insurance company will not issue the contract prior to principal approval by the broker-dealer.

Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2012-027 eff. July 9, 2012.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2009-083 eff. Feb. 8, 2010.
Amended by SR-FINRA-2008-019 eff. Feb. 8, 2010.
Amended by SR-FINRA-2008-015 eff. April 17, 2008.
Adopted by SR-NASD-2004-183 eff. May 5, 2008.

Selected Notices: 07-53, 09-32, 09-72.

‹ 2320. VARIABLE CONTRACTS OF AN INSURANCE COMPANY | UP | 2340. INVESTMENT COMPANIES ›

VERSIONS

Dec 01, 2014 onwards

2341. Investment Company Securities

(a) Application

This Rule shall apply exclusively to the activities of members in connection with the securities of companies registered under the Investment Company Act; provided however, that Rule 2320 shall apply, in lieu of this Rule, to members' activities in connection with "variable contracts" as defined therein.

(b) Definitions

(1) The terms "affiliated member," "compensation," "cash compensation," "non-cash compensation" and "offeror" as used in paragraph (l) of this Rule shall have the following meanings:

(A) "Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.

(B) "Compensation" shall mean cash compensation and non-cash compensation.

(C) "Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override or cash employee benefit received in connection with the sale and distribution of investment company securities.

(D) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(E) "Offeror" shall mean an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act) of such entities.

(2) "Brokerage commissions," as used in paragraph (k), shall not be limited to commissions on agency transactions but shall include underwriting discounts or concessions and fees paid to members in connection with tender offers.

(3) "Covered account," as used in paragraph (k), shall mean (A) any other investment company or other account managed by the investment adviser of such investment company, or (B) any other account from which brokerage commissions are received or expected as a result of the request or direction of any principal underwriter of such investment company or of any affiliated person (as defined in the Investment Company Act) of such investment company or of such underwriter, or of any affiliated person of an affiliated person of such investment company.

(4) "Person" shall mean "person" as defined in the Investment Company Act.

(5) "Prime rate," as used in paragraph (d), shall mean the most preferential interest rate on corporate loans at large U.S. money center commercial banks.

(6) "Public offering price" shall mean a public offering price as set forth in the prospectus of the issuing company.

(7) "Rights of accumulation" as used in paragraph (d), shall mean a scale of reducing sales charges in which the sales charge applicable to the securities being purchased is based upon the aggregate quantity of securities previously purchased or acquired and then owned plus the securities being purchased. The quantity of securities owned shall be based upon:

(A) The current value of such securities (measured by either net asset value or maximum offering price); or

(B) Total purchases of such securities at actual offering prices; or

(C) The higher of the current value or the total purchases of such securities.

The quantity of securities owned may also include redeemable securities of other registered investment companies having the same principal underwriter.

(8) "Sales charge" and "sales charges," as used in paragraph (d), shall mean all charges or fees that are paid to finance sales or sales promotion expenses, including front-end, deferred and asset-based sales charges, excluding charges and fees for ministerial, recordkeeping or administrative activities and investment management fees. For purposes of this Rule, members may rely on the sales-related fees and charges disclosed in the prospectus of an investment company.

(A) An "asset-based sales charge" is a sales charge that is deducted from the net assets of an investment company and does not include a service fee.

(B) A "deferred sales charge" is any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

(C) A "front-end sales charge" is a sales charge that is included in the public offering price of the shares of an investment company.

(9) "Service fees," as used in paragraph (d), shall mean payments by an investment company for personal service and/or the maintenance of shareholder accounts.

(10) The terms "underwriter," "principal underwriter," "redeemable security," "periodic payment plan," "open-end company," "closed-end company" and "unit investment trust," shall have the same definitions used in the Investment Company Act.

(11) A "fund of funds" is an investment company that acquires securities issued by any other investment company registered under the Investment Company Act in excess of the amounts permitted under paragraph (A) of Section 12(d)(1) of the Investment Company Act. An "acquiring company" in a fund of funds is the investment company that purchases or otherwise acquires the securities of another investment company, and an "acquired company" is the investment company whose securities are acquired.

(12) "Investment companies in a single complex" are any two or more companies that hold themselves out to investors as related companies for purposes of investment and investor services.

(c) Conditions for Discounts to Dealers

No member who is an underwriter of the securities of an investment company shall sell any such security to any dealer or broker at any price other than a public offering price unless such sale is in conformance with Rule 2040 and, if the security is issued by an open-end company or by a unit investment trust which invests primarily in securities issued by other investment companies, unless a sales agreement is in effect between the parties as of the date of the transaction, which agreement shall set forth the concessions to be received by the dealer or broker.

(d) Sales Charge

No member shall offer or sell the shares of any open-end company, any closed-end company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the Investment Company Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act, or any "single payment" investment plan issued by a unit investment trust (collectively "investment companies") registered under the Investment Company Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) Investment Companies Without an Asset-Based Sales Charge

(A) Aggregate front-end and deferred sales charges described in the prospectus which may be imposed by an investment company without an asset-based sales charge shall not exceed 8.5% of the offering price.

(B)(i) Rights of accumulation (cumulative quantity discounts) may be made available to any person in accordance with one of the alternative quantity discount schedules provided in paragraph (d)(1)(C)(i) below, as in effect on the date the right is exercised.

(ii) If rights of accumulation are not made available on terms at least as favorable as those specified in paragraph (d)(1)(C)(i) the maximum aggregate sales charge shall not exceed 8.0% of offering price.

(C)(i) Quantity discounts, if offered, shall be made available on single purchases by any person in accordance with one of the following two alternatives:

a. A maximum aggregate sales charge of 7.75% on purchases of $10,000 or more and a maximum aggregate sales charge of 6.25% on purchases of $25,000 or more; or

b. A maximum aggregate sales charge of 7.50% on purchases of $15,000 or more and a maximum aggregate sales charge of 6.25% on purchases of $25,000 or more.

(ii) If quantity discounts are not made available on terms at least as favorable as those specified in paragraph (d)(1)(C)(i) the maximum aggregate sales charge shall not exceed:

a. 7.75% of offering price if the provisions of paragraphs (d)(1)(B) are met.

b. 7.25% of offering price if the provisions of paragraph (d)(1)(B) are not met.

(D) If an investment company without an asset-based sales charge pays a service fee, the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

(2) Investment Companies with an Asset-Based Sales Charge

(A) Except as provided in paragraphs (d)(2)(C) and (D), the aggregate asset-based, front-end and deferred sales charges described in the prospectus which may be imposed by an investment company with an asset-based sales charge, if the investment company has adopted a plan under which service fees are paid, shall not exceed 6.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of an investment company with multiple classes of shares or between series of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 6.25% of the amount invested.

(B) Except as provided in paragraphs (d)(2)(C) and (D), if an investment company with an asset-based sales charge does not pay a service fee, the aggregate asset-based, front-end and deferred sales charges described in the prospectus shall not exceed 7.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of an investment company with multiple classes of shares or between series of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 7.25% of the amount invested.

(C) The maximum aggregate sales charge on total new gross sales set forth in paragraphs (d)(2)(A) and (B) may be increased by an amount calculated by applying the appropriate percentages of 6.25% or 7.25% to total new gross sales which occurred after an investment company first adopted an asset-based sales charge until July 7, 1993 plus interest charges on such amount equal to the prime rate plus one percent per annum less any front-end, asset-based or deferred sales charges on such sales or net assets resulting from such sales.

(D) The maximum aggregate sales charges of an investment company in a single complex, a class of shares issued by an investment company with multiple classes of shares or a separate series of a series investment company, may be increased to include sales of exchanged shares provided that such increase is deducted from the maximum aggregate sales charges of the investment company, class or series which redeemed the shares for the purpose of such exchanges.

(E) No member shall offer or sell the shares of an investment company with an asset-based sales charge if:

(i) The amount of the asset-based sales charge exceeds .75 of 1% per annum of the average annual net assets of the investment company; or

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap described in paragraphs (d)(2)(A), (B), (C) and (D) hereof, has been attained are not credited to the investment company.

(3) Fund of Funds

(A) If neither an acquiring company nor an acquired company in a fund of funds structure has an asset-based sales charge, the maximum aggregate front-end and deferred sales charges that may be imposed by the acquiring company, the acquired company and those companies in combination, shall not exceed the rates provided in paragraph (d)(1).

(B) Any acquiring company or acquired company in a fund of funds structure that has an asset-based sales charge shall individually comply with the requirements of paragraph (d)(2), provided:

(i) If the acquiring and acquired companies are in a single complex and the acquired fund has an asset-based sales charge, sales made to the acquiring fund shall be excluded from total gross new sales for purposes of acquired fund's calculations under paragraphs (d)(2)(A) through (d)(2)(D); and

(ii) If both the acquiring and acquired companies have an asset-based sales charge:

a. the maximum aggregate asset-based sales charge imposed by the acquiring company, the acquired company and those companies in combination, shall not exceed the rate provided in paragraph (d)(2)(E)(i); and

b. the maximum aggregate front-end or deferred sales charges shall not exceed 7.25% of the amount invested, or 6.25% if either company pays a service fee.

(C) The rates described in paragraphs (d)(4) and (d)(5) shall apply to the acquiring company, the acquired company and those companies in combination. The limitations of paragraph (d)(6) shall apply to the acquiring company and the acquired company individually.

(4) No member or person associated with a member shall, either orally or in writing, describe an investment company as being "no load" or as having "no sales charge" if the investment company has a front-end or deferred sales charge or whose total charges against net assets to provide for sales related expenses and/or service fees exceed .25 of 1% of average net assets per annum.

(5) No member or person associated with a member shall offer or sell the securities of an investment company if the service fees paid by the investment company, as disclosed in the prospectus, exceed .25 of 1% of its average annual net assets or if a service fee paid by the investment company, as disclosed in the prospectus, to any person who sells its shares exceeds .25 of 1% of the average annual net asset value of such shares.

(6) No member or person associated with a member shall offer or sell the securities of an investment company if:

(A) The investment company has a deferred sales charge paid upon redemption that declines over the period of a shareholder's investment ("contingent deferred sales load"), unless the contingent deferred sales load is calculated as if the shares or amounts representing shares not subject to the load are redeemed first, and other shares or amounts representing shares are then redeemed in the order purchased, provided that another order of redemption may be used if such order would result in the redeeming shareholder paying a lower contingent deferred sales load; or

(B) The investment company has a front-end or deferred sales charge imposed on shares, or amounts representing shares, that are purchased through the reinvestment of dividends, unless the registration statement registering the investment company's securities under the Securities Act became effective prior to April 1, 2000.

(e) Selling Dividends

No member shall, in recommending the purchase of investment company securities, state or imply that the purchase of such securities shortly before an ex-dividend date is advantageous to the purchaser, unless there are specific, clearly described tax or other advantages to the purchaser, and no member shall represent that distributions of long-term capital gains by an investment company are or should be viewed as part of the income yield from an investment in such company's securities.

(f) Withhold Orders

No member shall withhold placing customers' orders for any investment company security so as to profit as a result of such withholding.

(g) Purchase for Existing Orders

No member shall purchase from an underwriter the securities of any open-end company and no member who is an underwriter of such securities shall purchase such securities from the issuer, except (1) for the purpose of covering purchase orders previously received or (2) for its own investment. Nothing herein shall be deemed to prohibit any member from purchasing securities of any investment company specifically designed for short-term investment (e.g., money market fund).

(h) Refund of Sales Charge

If any security issued by an open-end company is repurchased by the issuer, or by the underwriter for the account of the issuer, or is tendered for redemption within seven business days after the date of the transaction, (1) the dealer or broker shall forthwith refund to the underwriter the full concession allowed to the dealer or broker on the original sale and (2) the underwriter shall forthwith pay to the issuer the underwriter's share of the sales charge on the original sale by the underwriter and shall also pay to the issuer the refund which it received under paragraph (d)(1) when it receives such refund. The dealer or broker shall be notified by the underwriter of such repurchase or redemption within ten days of the date on which the certificate or written request for redemption is delivered to the underwriter or issuer. If the original sale was made directly to the investor by the principal underwriter, the entire sales charge shall be paid to the issuer by the principal underwriter.

(i) Purchases as Principal

No member who is a party to a sales agreement referred to in paragraph (c) shall, as principal, purchase any security issued by an open-end company or unit investment trust from a record holder at a price lower than the bid price next quoted by or for the issuer.

(j) Repurchase from Dealer

No member who is a principal underwriter of a security issued by an open-end company or a closed-end company that makes periodic repurchase offers pursuant to Rule 23c-3(b) under the Investment Company Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act shall repurchase such security, either as principal or as agent for the issuer, from a dealer acting as principal who is not a party to a sales agreement with a principal underwriter, nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. No member who is a principal underwriter shall participate in the offering or in the sale of any such security if the issuer voluntarily redeems or repurchases its securities from a dealer acting as principal who is not a party to such a sales agreement nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. Nothing in this paragraph shall relate to the compulsory redemption of any security upon presentation to the issuer pursuant to the terms of the security.

Nothing in this Rule shall prevent any member, whether or not a party to a sales agreement, from selling any such security for the account of a record owner to the underwriter or issuer at the bid price next quoted by or for the issuer and charging the investor to a reasonable charge for handling the transaction, provided that such member discloses to such record owner that direct redemption of the security can be accomplished by the record owner without incurring such charges.

(k) Execution of Investment Company Portfolio Transactions

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

(2) No member shall sell shares of, or act as underwriter for, an investment company, if the member knows or has reason to know that such investment company, or an investment adviser or principal underwriter of the company, has a written or oral agreement or understanding under which the company directs or is expected to direct portfolio securities transactions (or any commission, markup or other remuneration resulting from any such transaction) to a broker or a dealer in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

(3) No member shall, directly or indirectly, demand or require brokerage commissions or solicit a promise of such commissions from any source as a condition to the sale or distribution of shares of an investment company.

(4) No member shall, directly or indirectly, offer or promise to another member, brokerage commissions from any source as a condition to the sale or distribution of shares of an investment company and no member shall request or arrange for the direction to any member of a specific amount or percentage of brokerage commissions conditioned upon that member's sales or promise of sales of shares of an investment company.

(5) No member shall circulate any information regarding the amount or level of brokerage commissions received by the member from any investment company or covered account to other than management personnel who are required, in the overall management of the member's business, to have access to such information.

(6) No member shall, with respect to such member's activities as underwriter of investment company shares, suggest, encourage, or sponsor any incentive campaign or special sales effort of another member with respect to the shares of any investment company which incentive or sales effort is, to the knowledge or understanding of such underwriter-member, to be based upon, or financed by, brokerage commissions directed or arranged by the underwriter-member.

(7) No member shall, with respect to such member's retail sales or distribution of investment company shares:

(A) provide to salesmen, branch managers or other sales personnel any incentive or additional compensation for the sale of shares of specific investment companies based on the amount of brokerage commissions received or expected from any source, including such investment companies or any covered account. Included in this prohibition are bonuses, preferred compensation lists, sales incentive campaign or contests, or any other method of compensation which provides an incentive to sales personnel to favor or disfavor any investment company or group of investment companies based on brokerage commissions;

(B) recommend specific investment companies to sales personnel, or establish "recommended," "selected," or "preferred" lists of investment companies, regardless of the existence of any special compensation or incentives to favor or disfavor the shares of such company or companies in sales efforts, if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source;

(C) grant to salesmen, branch managers or other sales personnel any participation in brokerage commissions received by such member from portfolio transactions of an investment company whose shares are sold by such member, or from any covered account, if such commissions are directed by, or identified with, such investment company or any covered account; or

(D) use sales of shares of any investment company as a factor in negotiating the price of, or the amount of brokerage commissions to be paid on, a portfolio transaction of an investment company or of any covered account, whether such transaction is executed in the over-the-counter market or elsewhere.

(8) Provided that the member does not violate any of the specific provisions of this paragraph (k), nothing herein shall be deemed to prohibit:

(A) the execution of portfolio transactions of any investment company or covered account by members who also sell shares of the investment company; or

(B) a member from compensating its salesmen and managers based on total sales of investment company shares attributable to such salesmen or managers, whether by use of overrides, accounting credits, or other compensation methods, provided that such compensation is not designed to favor or disfavor sales of shares of particular investment companies on a basis prohibited by this paragraph (k).

(l) Member Compensation

In connection with the sale and distribution of investment company securities:

(1) Except as described below, no associated person of a member shall accept any compensation from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements where a non-member company pays compensation directly to associated persons of the member, provided that:

(A) the arrangement is agreed to by the member;

(B) the member relies on an appropriate rule, regulation, interpretive release, interpretive letter, or "no-action" letter issued by the SEC or its staff that applies to the specific fact situation of the arrangement;

(C) the receipt by associated persons of such compensation is treated as compensation received by the member for purposes of FINRA rules; and

(D) the recordkeeping requirement in paragraph (l)(3) is satisfied.

(2) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(3) Except for items described in subparagraphs (l)(5)(A) and (B), a member shall maintain records of all compensation received by the member or its associated persons from offerors. The records shall include the names of the offerors, the names of the associated persons, the amount of cash, the nature and, if known, the value of non-cash compensation received.

(4) No member shall accept any cash compensation from an offeror unless such compensation is described in a current prospectus of the investment company. When special cash compensation arrangements are made available by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus. Prospectus disclosure requirements shall not apply to cash compensation arrangements between:

(A) principal underwriters of the same security; and

(B) the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(5) No member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided below. Notwithstanding the provisions of paragraph (l)(1), the following non-cash compensation arrangements are permitted provided that they are consistent with the applicable requirements of SEA Rule 15l-1 ("Regulation Best Interest"):

(A) Gifts that do not exceed an annual amount per person fixed periodically by FINRA[1] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) the recordkeeping requirement in paragraph (l)(3) is satisfied;

(ii) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (l)(5)(D);

(iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iv) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (l)(5)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that:

(i) the member's or non-member's non-cash compensation arrangement, if it includes investment company securities, is based on the total production of associated persons with respect to all investment company securities distributed by the member;

(ii) the non-cash compensation arrangement requires that the credit received for each investment company security is equally weighted;

(iii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(iv) the recordkeeping requirement in paragraph (l)(3) is satisfied.

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in paragraph (l)(5)(D).

(m) Prompt Payment for Investment Company Shares

(1) Members (including underwriters) that engage in direct retail transactions for investment company shares shall transmit payments received from customers for such shares, which such members have sold to customers, to payees (i.e., underwriters, investment companies or their designated agents) by (A) the end of one business day following a receipt of a customer's order to purchase such shares or by (B) the end of one business day following receipt of a customer's payment for such shares, whichever is the later date.

(2) Members that are underwriters and that engage in wholesale transactions for investment company shares shall transmit payments for investment company shares, which such members have received from other members, to investment company issuers or their designated agents by the end of two business days following receipt of such payments.

(n) Disclosure of Deferred Sales Charges

In addition to the requirements for disclosure on written confirmations of transactions contained in Rule 2232, if the transaction involves the purchase of shares of an investment company that imposes a deferred sales charge on redemption, such written confirmation shall also include the following legend: "On selling your shares, you may pay a sales charge. For the charge and other fees, see the prospectus." The legend shall appear on the front of a confirmation and in, at least, 8-point type.

---

[1] The current annual amount fixed by FINRA is $100.

Amended by SR-FINRA-2023-017 eff. May 28, 2024.
Amended by SR-FINRA-2020-007 eff. June 30, 2020.
Amended by SR-FINRA-2016-047 eff. Sept. 5, 2017.
Amended by SR-FINRA-2016-019 eff. July 9, 2016.
Amended by SR-NASD-2004-027 eff. Feb. 14, 2005.
Amended by SR-NASD-99-74 eff. June 20, 2000.
Amended by SR-NASD-98-14 eff. April 1, 2000.
Amended by SR-NASD-97-35 eff. Jan. 1, 1999.
Amended by SR-NASD-94-56 eff. June 7, 1995.
Amended by SR-NASD-93-42 eff. Feb. 24, 1994.
Amended by SR-NASD-90-69 eff. July 7, 1993.
Amended by SR-NASD-90-56 eff. Oct. 1, 1991.
Amended by SR-NASD-86-34 eff. Oct. 31, 1988.
Amended by SR-NASD-84-51 eff. July 10, 1984.
Amended by SR-NASD-80-21 eff. Mar. 4, 1981.
Amended by SR-NASD-75-13 eff. May 1, 1976.
Amended by SEC Release No. 10147 eff. July 15, 1973.
Amended eff. Feb. 8, 1971.
Adopted by SEC Release No. 2866 eff. June 1, 1941.

Selected Notices: 73-42, 75-68, 75-70, 80-07, 80-13, 80-43, 81-08, 84-40, 85-86, 88-96, 89-51, 91-40, 91-68, 92-41, 93-12, 93-52, 93-82, 94-13, 94-14, 94-16, 94-41, 94-67, 95-36, 95-56, 97-48, 97-50, 98-75; 99-55, 99-103, 00-53, 05-04, 17-19, 20-18, 24-04.

‹ 2340. INVESTMENT COMPANIES UP 2342. "BREAKPOINT" SALES ›

VERSIONS

May 28, 2024 onwards

2342. "Breakpoint" Sales

(a) No member shall sell investment company shares in dollar amounts just below the point at which the sales charge is reduced on quantity transactions so as to share in the higher sales charges applicable on sales below the breakpoint.

(b) For purposes of determining whether a sale in dollar amounts just below a breakpoint was made in order to share in a higher sales charge, FINRA will consider the facts and circumstances, including, for example, whether a member has retained records that demonstrate that the trade was executed in accordance with a bona fide asset allocation program that the member offers to its customers:

(1) which is designed to meet their diversification needs and investment goals; and

(2) under which the member discloses to its customers that they may not qualify for breakpoint reductions that are otherwise available.

Amended by SR-FINRA-2009-018 eff. Aug. 17, 2009.
Amended by SR-NASD-99-74 eff. June 20, 2000.
Amended by SR-NASD-98-69 eff. Dec. 15, 1998.

Selected Notices: 98-98, 00-53, 09-33.

‹ 2341. INVESTMENT COMPANY SECURITIES UP 2350. TRADING IN INDEX WARRANTS, CURRENCY INDEX WARRANTS AND CURRENCY WARRANTS ›

2351. General Provisions Applicable to Trading in Index Warrants, Currency Index Warrants and Currency Warrants

(a) General

(1) Applicability — This Rule 2350 Series shall be applicable to the extent appropriate unless otherwise stated herein, to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed stock index warrants, currency index warrants, and currency warrants by members who are not members of the exchange on which the warrant is listed or traded.

(2) Except to the extent that specific provisions in this Rule Series govern, or unless the context otherwise requires, the provisions of the FINRA By-Laws, rules and all other interpretations and policies shall also be applicable to transactions in index warrants, currency index warrants, and currency warrants.

(3) The Rules in this Rule 2350 Series are not applicable to stock index warrants, currency index warrants, and currency warrants listed on national securities exchanges prior to September 28, 1995.

(b) Definitions

(1) The term "control" shall have the same meaning as the term "control" as set forth in Rule 2360(a)(6).

(2) The term "currency index" means a group of currencies each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a currency index.

(3) The term "currency index warrants" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying currency index has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying currency index.

(4) The term "currency warrants" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying foreign currency has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying foreign currency. The term "foreign currency warrants" shall also include cross-rate currency warrants.

(5) The term "index warrants" means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying stock index group has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying stock index group.

(6) The term "stock index group" means a group of stocks each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a stock index.

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2350. TRADING IN INDEX WARRANTS, CURRENCY INDEX WARRANTS AND CURRENCY WARRANTS | UP | 2352. ACCOUNT APPROVAL ›

2352. Account Approval

No member or person associated with a member shall accept an order from a customer to purchase or sell an index warrant, currency index warrant, or currency warrant unless the customer's account has been approved for options trading pursuant to Rule 2360(b)(16).

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2351. GENERAL PROVISIONS APPLICABLE TO TRADING IN INDEX WARRANTS, CURRENCY INDEX WARRANTS AND CURRENCY WARRANTS

UP

2353. SUITABILITY ›

2353. Suitability

The provisions of Rule 2360(b)(19) shall apply to recommendations by members and persons associated with members regarding the purchase or sale of index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule.

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2352. ACCOUNT APPROVAL UP 2354. DISCRETIONARY ACCOUNTS ›

2354. Discretionary Accounts

Insofar as a member or person associated with a member exercises discretion to trade in index warrants, currency index warrants, or currency warrants in a customer's account, such account shall be subject to the provisions of Rule 2360(b)(18). The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule.

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2353. SUITABILITY UP 2355. SUPERVISION OF ACCOUNTS ›

2355. Supervision of Accounts

The provisions of Rule 2360(b)(20) shall apply to all customer accounts of a member in which transactions in index warrants, currency index warrants, or currency warrants are effected. The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule.

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2354. DISCRETIONARY ACCOUNTS UP 2356. CUSTOMER COMPLAINTS ›

2356. Customer Complaints

The record-keeping requirements of Rule 2360(b)(17)(A) concerning the receipt and handling of customer complaints relating to options shall also apply to customer complaints relating to index warrants, currency index warrants, or currency warrants and the required records of such complaints shall be maintained together with the records pertaining to options related complaints, provided that complaints related to index warrants, currency index warrants, or currency warrants shall be clearly identified as such. The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule.

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2355. SUPERVISION OF ACCOUNTS UP 2357. COMMUNICATIONS WITH THE PUBLIC AND CUSTOMERS CONCERNING INDEX WARRANTS, CURRENCY INDEX WARRANTS AND CURRENCY WARRANTS ›

2357. Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants and Currency Warrants

The provisions of Rule 2220 shall be applicable to communications to customers regarding index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule and the term "The Options Clearing Corporation" shall be deemed to mean the issuer of such warrants.

Amended by SR-FINRA-2009-078 eff. Dec. 14, 2009.
Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notice to Members: 95-82, 08-57, 08-78.

‹ 2356. CUSTOMER COMPLAINTS UP 2358. MAINTENANCE OF RECORDS ›

VERSIONS

Dec 14, 2009 onwards

2358. Maintenance of Records

The record-keeping provisions of Rule 2360(b)(17)(B) shall be applicable to customer accounts approved to trade index warrants, currency index warrants, or currency warrants. The term "option" as used therein shall be deemed to include such warrants for purposes of this Rule.

Amended by SR-FINRA-2008-032 eff. Feb. 17, 2009.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2357. COMMUNICATIONS WITH THE PUBLIC AND CUSTOMERS CONCERNING INDEX WARRANTS, CURRENCY INDEX WARRANTS AND CURRENCY WARRANTS

UP

2359. POSITION AND EXERCISE LIMITS; LIQUIDATIONS ›

2359. Position and Exercise Limits; Liquidations

(a) Position Limits

Except with the prior written approval of FINRA pursuant to the Rule 9600 Series for good cause shown, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant issue on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the exchange on which the index warrant is listed.

(b) Exercise Limits

(1) Except with the prior written approval of FINRA pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant.

(2) FINRA, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time. Reasonable notice shall be given of each new limitation fixed by FINRA. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

(c) Liquidations

(1) Whenever FINRA determines that a person or group of persons acting in concert holds or controls an aggregate position (whether short or long) in index warrants overlying the same index in excess of the position limitations established by paragraph (a), it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct any member or all members carrying a position in index warrants overlying such index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in paragraph (a).

(2) Whenever such a directive is issued by FINRA no member receiving notice thereof shall accept and/or execute for any person or persons named in such directive any order to purchase or sell short any index warrants based on the same index, unless in each instance express approval therefor is given by FINRA, or the directive is rescinded.

Amended by SR-FINRA-2008-032 eff. Feb. 17. 2009.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Adopted by SR-NASD-95-37 eff. Sept. 28, 1995.

Selected Notices: 95-82, 08-57, 08-78.

‹ 2358. MAINTENANCE OF RECORDS UP 2360. OPTIONS ›

2360. Options

(a) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(1) Aggregate Exercise Price — The term "aggregate exercise price" means the exercise price of an option contract multiplied by the number of units of the underlying security covered by such option contract.

(2) Call — The term "call" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase the number of units of the underlying security or to receive a dollar equivalent of the underlying index covered by the option contract. In the case of a "call" issued by The Options Clearing Corporation on common stock, it shall mean an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from The Options Clearing Corporation the number of units of the underlying security or receive a dollar equivalent of the underlying index covered by the option contract.

(3) Class of Options — The term "class of options" means all option contracts of the same type of option covering the same underlying security or index.

(4) Clearing Member — The term "clearing member" means a FINRA member which has been admitted to membership in The Options Clearing Corporation pursuant to the provisions of the rules of The Options Clearing Corporation.

(5) Closing Sale Transaction — The term "closing sale transaction" means an option transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.

(6) Control

(A) The term "control" means the power or ability of an individual or entity to make investment decisions for an account or accounts, or influence directly or indirectly the investment decisions of any person or entity who makes investment decisions for an account. In addition, control will be presumed in the following circumstances:

(i) among all parties to a joint account who have authority to act on behalf of the account;

(ii) among all general partners to a partnership account;

(iii) when a person or entity:

a. holds an ownership interest of 10 percent or more in an entity (ownership interest of less than 10 percent will not preclude aggregation), or

b. shares in 10 percent or more of profits and/or losses of an account;

(iv) when accounts have common directors or management;

(v) where a person or entity has the authority to execute transactions in an account.

(B) Control, presumed by one or more of the above powers, abilities or circumstances, can be rebutted by proving the factor does not exist or by showing other factors which negate the presumption of control. The rebuttal proof must be submitted by affidavit and/or such other evidence as may be appropriate in the circumstances.

(C) FINRA will also consider the following factors in determining if aggregation of accounts is required:

(i) similar patterns of trading activity among separate entities;

(ii) the sharing of kindred business purposes and interests;

(iii) whether there is common supervision of the entities which extends beyond assuring adherence to each entity's investment objectives and/or restrictions;

(iv) the degree of contact and communication between directors and/or managers of separate accounts.

(7) Controls, Is Controlled by or Is Under Common Control With — The terms "controls," "is controlled by" and "is under common control with" shall have the meanings specified in Rule 405 of SEC Regulation C.

(8) Conventional Index Option — The term "conventional index option" means any options contract not issued, or subject to issuance, by The Options Clearing Corporation, or an OCC Cleared OTC Option, that, as of the trade date, overlies a basket or index of securities that:

(A) Underlies a standardized index option; or

(B) Satisfies the following criteria:

(i) The basket or index comprises 9 or more equity securities;

(ii) No equity security comprises more than 30% of the equity security component of the basket's or index's weighting; and

(iii) Each equity security comprising the basket or index:

a. is a component security in either the Russell 3000 Index or the FTSE All-World Index Series; or

b. has

1. market capitalization of at least $75 million or, in the case of the lowest weighted component securities in the basket or index that in the aggregate account for no more than 10% of the weight of the index, $50 million; and

2. trading volume for each of the preceding six months of at least one million shares or, in the case of each of the lowest weighted component securities in the basket or index that in the aggregate account for no more than 10% of the weight of the index, 500,000 shares.

(9) Conventional Option — The term "conventional option" shall mean: (A) any option contract not issued, or subject to issuance, by The Options Clearing Corporation; or (B) an OCC Cleared OTC Option.

(10) Covered — The term "covered" in respect of a short position in a call option contract means that the writer's obligation is secured by a "specific deposit" or an "escrow deposit," meeting the conditions of Rules 610(e) or 610(g), respectively, of the rules of The Options Clearing Corporation, or the writer holds in the same account as the short position, on a unit-for-unit basis, a long position either in the underlying security or in an option contract of the same class of options where the exercise price of the option contract in such long position is equal to or less than the exercise price of the option contract in such short position. The term "covered" in respect of a short position in a put option contract means that the writer holds in the same account as the short position, on a unit-for-unit basis, a long position in an option contract of the same class of options having an exercise price equal to or greater than the exercise price of the option contract in such short position.

(11) Delta Neutral — The term "delta neutral" describes an equity options position that has been fully hedged, in accordance with a Permitted Pricing Model as defined in paragraph (b)(3)(A)(ii)b. with a portfolio of instruments including or relating to the same underlying security to offset the risk that the value of the equity options position will change with incremental changes in the price of the security underlying the options position.

(12) Disclosure Document(s) — The term "disclosure document" or "disclosure documents" shall mean those documents filed with the SEC, prepared by one or more options markets and meeting the requirements of SEA Rule 9b-1. They shall contain general explanatory information relating to the mechanics of buying, writing and exercising options; the risks involved, the uses of and market for the options; transaction costs and applicable margin requirements; tax consequences of trading options; identification of the options issuer and the instrument underlying the options class; and the availability of the prospectus and the information in Part II of the registration statement.

(13) Exercise Price — The term "exercise price" in respect of an option contract means the stated price per unit at which the underlying security may be purchased (in the case of a call) or sold (in the case of a put) upon the exercise of such option contract.

(14) Expiration Date — The term "expiration date" of an option contract issued by The Options Clearing Corporation means the day and time fixed in accordance with the rules of The Options Clearing Corporation for the expiration of such option contract. The term "expiration date" of all other option contracts means the date specified thereon for such.

(15) Expiration Month — The term "expiration month" in respect of an option contract means the month and year in which such option contract expires.

(16) FLEX Equity Option — The term "FLEX Equity Option" means any options contract issued, or subject to issuance by, The Options Clearing Corporation, other than an OCC Cleared OTC Option, whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded.

(17) Long Position — The term "long position" means the number of outstanding option contracts of a given series of options held by a person (purchaser).

(18) Net Delta — The term "net delta" means the number of shares that must be maintained (either long or short) to offset the risk that the value of an equity options position will change with incremental changes in the price of the security underlying the options position.

(19) OCC Cleared OTC Option — The term "OCC Cleared OTC Option" means any put, call, straddle or other option or privilege that meets the definition of an "option" under Rule 2360(a)(21), and is cleared by The Options Clearing Corporation, is entered into other than on or through the facilities of a national securities exchange, and is entered into exclusively by persons who are "eligible contract participants" as defined in the Exchange Act.

(20) Opening Writing Transaction — The term "opening writing transaction" means an option transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.

(21) Option — The term "option" shall mean any put, call, straddle or other option or privilege, which is a "security" as defined in Section 2(1) of the Securities Act, as amended, but shall not include any (A) tender offer, (B) registered warrant, (C) right, (D) convertible security or (E) any other option in respect to which the writer (seller) is the issuer of the security which may be purchased or sold upon the exercise of the option.

(22) Option Transaction — The term "option transaction" means a transaction effected by a member for the purchase or sale of an option contract, or for the closing out of a long or short position in such option.

(23) Options Contract — The term "options contract" means any option as defined in paragraph (a)(21). For purposes of paragraphs (b)(3) through (12), an option to purchase or sell common stock shall be deemed to cover 100 shares of such stock at the time the contract granting such option is written. If a stock option is granted covering some other number of shares, then for purposes of paragraphs (b)(3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (e.g., an option to buy or sell five hundred shares of common stock shall be considered as five option contracts). A stock option contract that, when written, grants the right to purchase or sell 100 shares of common stock shall continue to be considered as one contract throughout its life, notwithstanding that, pursuant to its terms, the number of shares that it covers may be adjusted to reflect stock dividends, stock splits, reverse splits, or other similar actions by the issuer of such stock.

(24) Options Contract Equivalent of the Net Delta – the term "options contract equivalent of the net delta" means the net delta divided by the number of shares underlying the options contract.

(25) Options Trading — The term "options trading" means trading (A) in any option issued by The Options Clearing Corporation, and (B) in any conventional option.

(26) Outstanding — The term "outstanding" in respect of an option contract means an option contract which has neither been the subject of a closing sale transaction nor has been exercised nor reached its expiration date.

(27) Premium — The term "premium" means the aggregate price of the option contracts agreed upon between the buyer and writer/seller or their agents.

(28) Put — The term "put" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to sell the number of units of the underlying security or deliver a dollar equivalent of the underlying index covered by the option contract. In the case of a "put" issued by The Options Clearing Corporation on common stock, it shall mean an option contract under which the holder of the option has the right, in accordance with terms of the option, to sell to The Options Clearing Corporation the number of units of the underlying security covered by the option contract or to tender the dollar equivalent of the underlying index.

(29) Rules of The Options Clearing Corporation — The term "rules of The Options Clearing Corporation" means the by-laws and the rules of The Options Clearing Corporation, and all written interpretations thereof as may be in effect from time to time.

(30) Series of Options — The term "series of options" means all option contracts of the same class of options having the same exercise price and expiration date and which cover the same number of units of the underlying security or index.

(31) Short Position — The term "short position" means the number of outstanding option contracts of a given series of options with respect to which a person is obligated as a writer (seller).

(32) Standardized Equity Option — The term "standardized equity option" means any equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option and not an OCC Cleared OTC Option.

(33) Standardized Index Option — The term "standardized index option" means any options contract issued, or subject to issuance, by The Options Clearing Corporation that is based upon an index and is not an OCC Cleared OTC Option.

(34) The Options Clearing Corporation — The term "The Options Clearing Corporation" means The Options Clearing Corporation.

(35) Type of Option — The term "type of option" means the classification of an option contract as either a put or a call.

(36) Uncovered — The term "uncovered" in respect of a short position in an option contract means the short position is not covered. For purposes of paragraph (b)(16) (Opening of Accounts), paragraph (b)(20) (Supervision of Accounts) and paragraph (b)(11) (Delivery of

Current Disclosure Document(s)), the term "writing uncovered short option positions" shall include combinations and any other transactions which involve uncovered writing.

(37) Underlying Index — The term "underlying index" means an index underlying a Standardized Index Option or a Conventional Index Option.

(38) Underlying Security — The term "underlying security" in respect of an option contract means the security which The Options Clearing Corporation or another person shall be obligated to sell (in the case of a call) or purchase (in the case of a put) upon the valid exercise of such option contract.

(39) Unit — The term "unit" shall mean the smallest interest in a particular security which can be purchased or sold, such as one share of stock, one warrant, one bond, and so forth.

(b) Requirements

(1) Applicability

This Rule shall be applicable to the extent appropriate unless otherwise stated herein: (A) to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members that are not members of an exchange on which the option executed is listed; (B) to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options by all members; and (C) to other matters related to options trading.

Subparagraphs (3) through (12) shall apply only to standardized and conventional options on common stock. Subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a)(21), including common stock unless otherwise indicated herein.

(2) FLEX Equity Options

The position and exercise limits for FLEX Equity Options for members that are not also members of the exchange on which FLEX Equity Options trade shall be the same as the position and exercise limits as applicable to members of the exchange on which such FLEX Equity Options are traded.

(3) Position Limits

(A) Stock Options —

(i) Standardized Equity Options

Except in highly unusual circumstances, and with the prior written approval of FINRA pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate standardized equity options position in excess of the highest position limit established by an exchange on which the option trades, or such other number of stock option contracts as may be fixed from time to time by FINRA as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by FINRA.

(ii) Equity Option Hedge Exemptions

a. The following qualified hedge strategies and positions described in subparagraphs 1. through 6. below shall be exempt from the established position limits under this Rule for standardized options. Hedge strategies and positions described in subparagraphs 7. and 8. below in which one of the option components consists of a conventional option, shall be subject to a position limit of five times the established position limits contained in paragraphs (b)(3)(A)(iii)a.1. through 6. below. Hedge strategies and positions in conventional options as described in subparagraphs 1. through 6. below shall be subject to a position limit of five times the established position limits contained in paragraphs (b)(3)(A)(iii)a.1. through 6. below. Options positions limits established under this subparagraph shall be separate from limits established in other provisions of this Rule.

1. Where each option contract is "hedged" or "covered" by 100 shares of the underlying security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. Reverse Conversions — A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

3. Conversions — A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

4. Reverse Collars — A long call position accompanied by a short put position where the long call expires with the short put and the strike price of the long call equals or exceeds the short put and where each long call and short put position is hedged with 100 shares of the underlying security (or other adjusted number of shares). Neither side of the long call, short put position can be in-the-money at the time the position is established.

5. Collars — A short call position accompanied by a long put position, where the short call expires with the long put, and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.

6. Box Spreads — A long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price.

7. Back-to-Back Options — A listed option position hedged on a one-for-one basis with an over-the-counter (OTC) option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

8. For reverse conversion, conversion, reverse collar and collar strategies set forth above in subparagraphs 2., 3., 4. and 5., one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

b. Delta Hedging Exemption For Members and Non- Member Affiliates

An equity options position of a member or non-member affiliate in standardized and/or conventional equity options that is delta neutral under a Permitted Pricing Model shall be exempt from position limits under this Rule. Any equity options position of such member or non-member affiliate that is not delta neutral shall be subject to position limits, subject to the availability of other options position limit exemptions. The number of options contracts attributable to a position that is not delta neutral shall be the options contract equivalent of the net delta.

1. Permitted Pricing Model shall mean:

A. A pricing model maintained and operated by the Options Clearing Corporation ("OCC Model") when used by a member, or non-member affiliate permitted to rely on subparagraphs B or C;

B. A pricing model maintained and used by a member subject to consolidated supervision by the SEC pursuant to Appendix E of SEA Rule 15c3-1, or by an affiliate that is part of such member's consolidated supervised holding company group, in accordance with its internal risk management control system and consistent with the requirements of Appendices E or G, as applicable, to SEA Rule 15c3-1 and SEA Rule 15c3-4, as amended from time to time, in connection with the calculation of risk-based deductions from capital or capital allowances for market risk thereunder, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such member's consolidated supervised holding company group;

C. A pricing model maintained and used by a financial holding company ("FHC") or a company treated as an FHC under the Bank Holding Company Act, or by an affiliate that is part of either such company's consolidated supervised holding company group, in accordance with its internal risk management control system and consistent with:

i. the requirements of the Board of Governors of the Federal Reserve System, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Board of Governors of the Federal Reserve System, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or

ii. the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company – where "principal regulator" means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company – provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group;

D. A pricing model maintained and used by an OTC derivatives dealer registered with the SEC pursuant to SEA Rule 15c3-1(a)(5) in accordance with its internal risk management control system and consistent with the requirements of Appendix F to SEA Rule 15c3-1 and SEA Rule 15c3-4, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder, provided that only such OTC derivatives dealer and no other affiliated entity (including a member) may rely on this subparagraph D; or

E. A pricing model used by a national bank under the National Bank Act maintained and used in accordance with its internal risk management control system and consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency, provided that only such national bank and no other affiliated entity (including a member) may rely on this exemption.

2. Effect on Aggregation of Account Positions

A. Members and non-member affiliates who rely on this exemption must ensure that the Permitted Pricing Model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by such member or non-member affiliate.

B. Notwithstanding subparagraph b.2.A. of this Rule, the Net Delta of an options position held by an entity entitled to rely on this exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security underlying the options positions held by an affiliated entity or by another trading unit within the same entity, provided that:

i. the entity demonstrates to FINRA's satisfaction that no control relationship, as discussed in Supplementary Material .02, exists between such affiliates or trading units; and

ii. the entity has provided FINRA written notice in advance that it intends to be considered separate and distinct from any affiliate, or — as applicable — which trading units within the entity are to be considered separate and distinct from each other for purposes of this exemption.

C. Notwithstanding subparagraph b.2.A. or b.2.B. of this Rule, a member or non-member affiliate who relies on this exemption shall designate, by prior written notice to FINRA, each trading unit or entity whose options positions are required under FINRA rules to be aggregated with the option positions of such member or non-member affiliate that is relying on this exemption for purposes of compliance with FINRA position limits or exercise limits. In any such case:

i. the Permitted Pricing Model shall be applied, for purposes of calculating such member's or affiliate's net delta, only to the positions in or relating to the security underlying any relevant option position owned and controlled by those entities and trading units who are relying on this exemption; and

ii. the net delta of the positions owned or controlled by the entities and trading units who are relying on this exemption shall be aggregated with the nonexempt option positions of all other entities and trading units whose options positions are required under FINRA rules to be aggregated with the option positions of such member or affiliate.

3. Obligations of Members and Affiliates

A member that relies, or whose affiliate relies, upon this exemption must provide a written certification to FINRA that it and/or its affiliates are using a Permitted Pricing Model pursuant to subparagraph 1. above and that if the affiliate ceases to hedge stock options positions in accordance with such Permitted Pricing Model, it will provide immediate written notice to the member.

The options positions of a non-member relying on this exemption must be carried by a member with which it is affiliated.

4. Reporting

A. Each member must report in accordance with paragraph (b)(5), all equity option positions (including those that are delta neutral) of 200 or more contracts (whether long or short) on the same side of the market covering the same underlying security that are effected by the member.

B. In addition, each member on its own behalf or on behalf of a designated aggregation unit pursuant to paragraph (b)(3)(A)(ii)b.2. shall report in a manner specified by FINRA the options contract equivalent of the net delta of each position that represents 200 or more contracts (whether long or short) on the same side of the market covering the same underlying security that are effected by the member.

(iii) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity option contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity option contracts or FLEX Equity Option contracts overlying the same security on the same side of the market. Conventional equity option contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit of:

1. 25,000 option contracts, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

2. 50,000 option contracts for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 50,000 option contracts; or

3. 75,000 option contracts for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or

4. 200,000 option contracts for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 200,000 option contracts; or

5. 250,000 option contracts for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of 250,000 option contracts; or

6. for selected conventional options on exchange-traded funds ("ETF"), the position limits are listed in the chart below:

Security Underlying Option	**Position Limit**
The DIAMONDS Trust (DIA)	300,000 contracts
The Standard and Poor's Depositary Receipts Trust (SPY)	3,600,000 contracts
The iShares Russell 2000 ETF (IWM)	1,000,000 contracts
The PowerShares QQQ Trust (QQQ)	1,800,000 contracts
The iShares MSCI Emerging Markets ETF (EEM)	1,000,000 contracts
iShares China Large-Cap ETF (FXI)	1,000,000 contracts
iShares MSCI EAFE ETF (EFA)	1,000,000 contracts
iShares MSCI Brazil Capped ETF (EWZ)	500,000 contracts
iShares 20+ Year Treasury Bond Fund ETF (TLT)	500,000 contracts
iShares MSCI Japan ETF (EWJ)	500,000 contracts
iShares iBoxx High Yield Corporate Bond Fund (HYG)	500,000 contracts
iShares iBoxx $ Investment Grade Corporate Bond ETF (LQD)	500,000 contracts
Financial Select Sector SPDR Fund (XLF)	500,000 contracts
VanEck Vectors Gold Miners ETF (GDX)	500,000 contracts

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than 25,000 contracts, a member must first demonstrate to FINRA's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Provided, however, that for certain securities in an index designated by FINRA, a member may claim such higher position limit as permitted in accordance with the volume and float criteria specified by FINRA; provided further, that a member claiming a higher position limit under this subparagraph must notify FINRA's Market Regulation Department in writing in such form as may be prescribed by FINRA and shall be filed no later than the close of business day on the next business day following the day on which the transaction or transactions requiring such limits occurred; and provided further, that the member must agree to reduce its position in the event that FINRA staff determines different position limits shall apply.

(B) Index Options

Except in highly unusual circumstances, and with the prior written approval of FINRA pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by the exchange on which the option trades.

(C) Index option contracts shall not be aggregated with option contracts on any stocks whose prices are the basis for calculation of the index.

(D) FINRA will notify the SEC at any time it approves a request to exceed the limits established pursuant to paragraph (b)(3).

(4) Exercise Limits

Except in highly unusual circumstances, and with the prior written approval of FINRA pursuant to the Rule 9600 Series for good cause shown in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof or for the account of any customer, non-member broker, or non-member dealer, any option contract if as a result thereof such member or partner, officer, director or employee thereof or customer, non-member broker, or non-member dealer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days a number of option contracts of a particular class of options in excess of the limits for options positions in paragraph (b)(3). FINRA may institute other limitations concerning the exercise of option contracts from time to time by action of FINRA. Reasonable notice shall be given of each new limitation fixed by FINRA.

(5) Reporting of Options Positions

(A)(i)a. Conventional Options

Each member shall file or cause to be filed with FINRA a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which, acting alone or in concert, has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, combining for purposes of this subparagraph long positions in put options with short positions in call options and short positions in put options with long positions in call options, provided, however, that such reporting with respect to positions in conventional index options shall apply only to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option.

b. Standardized Options

Each member that conducts a business in standardized options but is not a member of the options exchange upon which the standardized options are listed and traded shall file or cause to be filed with FINRA a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which, acting alone or in concert, has established an aggregate position of 200 or more option contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, combining for purposes of this subparagraph long positions in put options with short positions in call options and short positions in put options with long positions in call options.

(ii) The reports required by this subparagraph shall identify the person or persons having an interest in such account and shall identify separately the total number of option contracts of each such class comprising the reportable position in such account. The reports shall be in such form as may be prescribed by FINRA and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this subparagraph, the member filing such shall file with FINRA such additional periodic reports with respect to such account as FINRA may from time to time prescribe.

(B) In addition to the reports required by subparagraph (A) above, each member shall report promptly to FINRA any instance in which such member has a reason to believe that a person, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits or the exercise limits set forth in paragraphs (b)(3) and (4).

(6) Liquidation of Positions and Restrictions on Access

(A) Whenever FINRA determines that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position in option contracts covering any underlying security or index in excess of the position limitations established by paragraph (b)(3), it may, when deemed necessary or appropriate in the public interest and for the protection of investors, direct:

(i) any member or all members carrying a position in option contracts covering such underlying security or index for such person or persons to liquidate such position or positions, or portions thereof, as expeditiously as possible and consistent with the maintenance of an orderly market, so as to bring such person or persons into compliance with the position limitations contained in paragraph (b)(3);

(ii) that such person or persons named therein not be permitted to execute an opening transaction, and that no member shall accept and/or execute for any person or persons named in such directive, any order for an opening transaction in any option contract, unless in each instance express approval therefor is given by FINRA, the directive is rescinded, or the directive specifies another restriction appropriate under the circumstances.

(B) Prior to the issuance of any directive provided for in subparagraph (A), FINRA shall notify, in the most expeditious manner possible, such person, or group of persons of such action, the specific grounds therefor and provide them an opportunity to be heard thereon. In the absence of unusual circumstances, in the case of a directive pursuant to the provisions of subparagraph (A)(i) hereof, the hearing shall be held within one business day of notice. In the case of a directive pursuant to the provisions of subparagraph (A)(ii) hereof, the hearing shall be held as promptly as possible under the circumstances. In any such proceeding a record shall be kept. A determination by FINRA after hearing or waiver of hearing, to implement such directive shall be in writing and shall be supported by a statement setting forth the specific grounds on which the determination is based. Any person aggrieved by action taken by FINRA pursuant to this subparagraph may make application for review to the SEC in accordance with Section 19 of the Exchange Act.

(7) Limit on Uncovered Short Positions

Whenever FINRA shall determine in light of current conditions in the markets for options, or in the markets for underlying securities, that there are outstanding a number of uncovered short positions in option contracts of a given class in excess of the limits established by FINRA for purposes of this subparagraph or that a percentage of outstanding short positions in option contracts of a given class are

uncovered, in excess of the limits established by FINRA for purposes of this subparagraph, FINRA, upon its determination that such action is in the public interest and necessary for the protection of investors and the maintenance of a fair and orderly market in the option contracts or underlying securities, may prohibit any further opening writing transactions in option contracts of that class unless the resulting short position will be covered, and it may prohibit the uncovering of any existing covered short position in option contracts of one or more series of options of that class.

(8) Restrictions on Option Transactions and Exercises

FINRA may impose from time to time such restrictions on option transactions or the exercise of option contracts in one or more series of options of any class which it determines are necessary in the interest of maintaining a fair and orderly market in option contracts, or in the underlying securities covered by such option contracts, or otherwise necessary in the public interest or for the protection of investors. During the period of any such restriction, no member shall effect any option transaction or exercise any option contract in contravention of such restriction. Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, no restriction established pursuant to this subparagraph on the exercise of option contracts shall remain in effect with respect to that series of options.

(9) Rights and Obligations of Holders and Writers

Subject to the provisions of paragraphs (b)(4), (6), and (8), the rights and obligations of holders and writers of option contracts of any class of options issued by The Options Clearing Corporation shall be set forth in the rules of The Options Clearing Corporation.

(10) Open Orders on "Ex-Date"

Open orders for one or more option contracts of any class of options issued by The Options Clearing Corporation held by members prior to the effective date of an adjustment by The Options Clearing Corporation to the terms of a class of options pursuant to Article VI, Section 11A of the By-Laws of The Options Clearing Corporation shall be adjusted on the "ex-date" by such amount as The Options Clearing Corporation shall specify, unless otherwise instructed by the customer.

(11) Delivery of Current Disclosure Documents

(A)(i) Characteristics and Risks of Standardized Options (the "ODD"). Every member shall deliver the current ODD to each customer at or prior to the time such customer's account is approved for trading options issued by The Options Clearing Corporation, other than an OCC Cleared OTC Option. Thereafter, a copy of each amendment to the ODD shall be distributed to each customer to whom the member previously delivered the ODD not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such customer.

(ii) Special Statement for Uncovered Option Writers ("Special Written Statement"). In the case of customers approved for writing uncovered short options transactions, the Special Written Statement required by paragraph (b)(16) shall be in a format prescribed by FINRA and delivered to customers in accordance with paragraph (b)(16). A copy of each new or revised Special Written Statement shall be distributed to each customer having an account approved for writing uncovered short options not later than the time a confirmation of a transaction is delivered to each customer who enters into a transaction in options issued by The Options Clearing Corporation, other than an OCC Cleared OTC Option.

(iii) FINRA will advise members when a new or revised current disclosure document meeting the requirements of SEA Rule 9b-1 is available.

(B) Where a broker or dealer enters his orders with another member in a single omnibus account, the member holding the account shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of current disclosure documents, as requested by him in order to enable him to comply with the requirements of SEA Rule 9b-1.

(C) Where an introducing broker or dealer enters orders for his customers with, or clears transactions through, a member on a fully disclosed basis and that member carries the accounts of such customers, the responsibility for delivering the current disclosure document(s) as provided in this paragraph (b)(11) shall rest with the member carrying the accounts. However, such member may rely upon the good faith representation of the introducing broker or dealer that the current disclosure document(s) has been delivered in compliance with paragraph (b)(11).

(12) Confirmations

Every member shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying security or index, the expiration month, the exercise price, the number of option contracts, the premium, the commission, the trade and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, whether the transaction was effected on a principal or agency basis and, for other than options issued by The Options Clearing Corporation, the date of expiration. The

confirmation shall by appropriate symbols distinguish between exchange listed and other transactions in option contracts though such confirmation does not need to specify the exchange or exchanges on which such options contracts were executed.

(13) Transactions with Issuers

No member shall enter a transaction for the sale (writing) of a call option contract for the account of any corporation which is the issuer of the underlying security thereof.

(14) Restricted Stock

For the purposes of covering a short position in a call option contract, delivery pursuant to the exercise of a put option contract, or satisfying an exercise notice assigned in respect of a call option contract, no member shall accept shares of an underlying stock, which may not be sold by the holder thereof except upon registration pursuant to the provisions of the Securities Act or pursuant to SEC rules promulgated under the Securities Act, unless, at the time such securities are accepted and at any later time such securities are delivered, applicable provisions of the Securities Act and the rules thereunder have been complied with by the holder of such securities.

(15) Statements of Account

(A) Statements of account showing security and money positions, entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement shall be sent no less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to an option contract and quarterly to all customers having an open option position or money balance. Interest charges and any special charges assessed during the period covered by the statement need not be specifically delineated if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to options customers having a general (margin) account, such statements shall also provide the mark-to-market price and market value of each option position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity. The statements shall bear a legend stating that further information with respect to commissions and other charges related to the execution of option transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request. The statements shall also bear a legend requesting the customer promptly to advise the member of any material change in the customer's investment objectives or financial situation.

(B) For purposes of this subparagraph (15), general (margin) account equity shall be computed by subtracting the total of the "short" security values and any debit balance from the total of the "long" security values and any credit balance.

(16) Opening of Accounts

(A) Approval Required

No member or person associated with a member shall accept an order from a customer to purchase or write an option contract relating to an options class that is the subject of an options disclosure document, or approve the customer's account for the trading of such option, unless the broker or dealer furnishes or has furnished to the customer the appropriate options disclosure document(s) and the customer's account has been approved for options trading in accordance with the provisions of subparagraphs (B) through (D) hereof.

(B) Diligence in Opening Accounts

In approving a customer's account for options trading, a member or any person associated with a member shall exercise due diligence to ascertain the essential facts relative to the customer, his financial situation and investment objectives. Based upon such information, the branch office manager, a Registered Options Principal or a Limited Principal—General Securities Sales Supervisor shall specifically approve or disapprove in writing the customer's account for options trading; provided, that if the branch office manager is not a Registered Options Principal or a Limited Principal—General Securities Sales Supervisor, account approval or disapproval shall within ten (10) business days be submitted to and approved or disapproved by a Registered Options Principal or a Limited Principal—General Securities Sales Supervisor.

(i) With respect to options customers who are natural persons, members shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

a. Investment objectives (e.g., safety of principal, income, growth, trading profits, speculation);

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

c. Estimated annual income from all sources;

d. Estimated net worth (exclusive of family residence);

e. Estimated liquid net worth (cash, securities, other);

f. Marital status; number of dependents;

g. Age; and

h. Investment experience and knowledge (e.g., number of years, size, frequency and type of transactions) for options, stocks and bonds, commodities, and other financial instruments.

(ii) In addition, a customer's account records shall contain the following information, if applicable:

a. Source or sources of background and financial information (including estimates) concerning the customer;

b. Discretionary authorization agreement on file, name, relationship to customer and experience of person holding trading authority;

c. Date disclosure document(s) furnished to customer;

d. Nature and types of transactions for which account is approved (e.g., buying covered writing, uncovered writing, spreading, discretionary transactions);

e. Name of registered representative;

f. Name of Registered Options Principal or Limited Principal—General Securities Sales Supervisor approving account; date of approval; and

g. Dates of verification of currency of account information.

(iii) Members shall consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

(iv) Refusal of a customer to provide any of the information called for in subparagraph (i) shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with the other information available in determining whether and to what extent to approve the account for options trading.

(v) A record of the information obtained pursuant to this subparagraph and of the approval or disapproval of each such account shall be maintained by the member as part of its permanent records in accordance with paragraph (b)(17).

(C) Verification of Customer Background and Financial Information

The background and financial information upon which the account of every new options customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options trading. A copy of the background and financial information on file with a member shall also be sent to the customer for verification within fifteen (15) days after the member becomes aware of any material change in the customer's financial situation.

Members shall satisfy the initial and subsequent verification of customer background and financial information by sending to the customer the information required in subparagraphs (B)(i)a. through f. hereof, as contained in the member's records and providing the customer with an opportunity to correct or complete the information. In all cases, absent advice from the customer to the contrary, the information will be deemed to be verified.

(D) Account Agreement

Within fifteen (15) days after a customer's account has been approved for options trading, a member shall obtain from the customer a written agreement that the customer is aware of and agrees to be bound by FINRA rules applicable to the trading of option contracts and, if he desires to engage in transactions in options issued by The Options Clearing Corporation, other than solely for OCC Cleared OTC Options, that the customer has received a copy of the current disclosure document(s) required to be furnished under this subparagraph (16) and that he is aware of and agrees to be bound by the rules of The Options Clearing Corporation. In addition, the customer shall indicate on such written agreement that he is aware of and agrees not to violate the position limits established pursuant to paragraph (b)(3) and the exercise limits established pursuant to paragraph (b)(4).

(E) Uncovered Short Option Contracts

Each member transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain specific written procedures governing the conduct of such business which shall include, at least, the following:

(i) Specific criteria and standards to be used in evaluating the suitability of a customer for writing uncovered short option transactions;

(ii) Specific procedures for approval of accounts engaged in writing uncovered short option contracts, including written approval of such accounts by a Registered Options Principal;

(iii) Designation of a specific Registered Options Principal(s) as responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

(iv) Establishment of specific minimum net equity requirements for initial approval and maintenance of customer accounts writing uncovered short option transactions; and

(v) Requirements that customers approved for writing uncovered short options transactions be provided with a special written statement for uncovered option writers approved by FINRA that describes the risks inherent in writing uncovered short option transactions, at or prior to the initial writing of an uncovered short option transaction.

(17) Maintenance of Records

(A) In addition to the requirements of Rules 2268, 5340 and Rule 4510 Series, every member shall maintain and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include:

(i) identification of complainant;

(ii) date complaint was received;

(iii) identification of registered representative servicing the account;

(iv) a general description of the matter complained of; and

(v) a record of what action, if any, has been taken by the member with respect to the complaint.

For purposes of this subparagraph, the term "options-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with options. Each options-related complaint received by a branch office of a member shall be forwarded to the office in which the separate, central file is located not later than 30 days after receipt by the branch office that is the subject of the complaint. A copy of every options-related complaint shall also be maintained at the branch office that is the subject of the complaint.

(B) Background and financial information of customers who have been approved for options trading shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of options customers shall also be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable. Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No member and no person associated with a member shall exercise any discretionary power with respect to trading in option contracts in a customer's account, or accept orders for option contracts for an account from a person other than the customer, except in compliance with the provisions of Rule 3260 and unless:

a. The written authorization of the customer required by Rule 3260 shall specifically authorize options trading in the account; and

b. the account shall have been accepted in writing by a Registered Options Principal or Limited Principal—General Securities Sales Supervisor.

(ii) Each firm shall designate specific Registered Options Principals as described below to review discretionary accounts. A Registered Options Principal other than the Registered Options Principal or Limited Principal—General Securities Sales Supervisor who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options Principal or Limited Principal—General Securities Sales Supervisor accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by a Registered Options Principal who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 4512(c), pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) Any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require specific Registered Options Principals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

(B) Record of Transactions

A record shall be made of every transaction in option contracts in respect to which a member or person associated with a member has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, the premium and the date and time when such transaction was effected.

(C) Option Programs

Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the customer shall be furnished with a written explanation of the nature and risks of such programs.

(19) Suitability

(A) No member or person associated with a member shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract unless such member or person associated therewith has reasonable grounds to believe upon the basis of information furnished by such customer after reasonable inquiry by the member or person associated therewith concerning the customer's investment objectives, financial situation and needs, and any other information known by such member or associated person, that the recommended transaction is not unsuitable for such customer.

(B) No member or person associated with a member shall recommend to a customer an opening transaction in any option contract unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.

(20) Supervision of Accounts

(A) Duty to Supervise

Each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to Rules 3110, 3120, and 3130 adequately address the member's public customer options business.

(B) Branch Offices

No branch office of a member shall transact an options business unless the principal supervisor of such branch office accepting options transactions has been qualified as either a Registered Options Principal or a Limited Principal—General Securities Sales Supervisor; provided that this requirement shall not apply to branch offices in which no more than three registered representatives are located, so long as the options activities of such branch offices are appropriately supervised by either a Registered Options Principal or a Limited Principal—General Securities Sales Supervisor.

(C) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, or have readily accessible and promptly retrievable, information to permit review of each customer's options account on a timely basis to determine:

(i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

(ii) the size and frequency of options transactions;

(iii) commission activity in the account;

(iv) profit or loss in the account;

(v) undue concentration in any options class or classes, and

(vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

(21) Violation of By-Laws and Rules of FINRA or The Options Clearing Corporation

(A) In FINRA disciplinary proceedings, a finding of violation of any provision of the rules, regulations or by-laws of The Options Clearing Corporation by any member or person associated with a member engaged in transactions involving options issued, or subject to issuance, by The Options Clearing Corporation, may be deemed to be conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010.

(B) In FINRA disciplinary proceedings, a finding of violation of any provision of the FINRA rules, regulations or By-Laws by any member engaged in option transactions may be deemed to be conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010.

(22) Stock Transfer Tax

Any stock transfer or similar tax payable in accordance with applicable laws and regulations of a taxing jurisdiction upon the sale, transfer or delivery of securities pursuant to the exercise of an option contract shall be the responsibility of the seller (writer) to whom the exercise notice is assigned in the case of a call option contract or the exercising holder in the case of a put option contract except that (A) in the case of a call option contract where the incidents of the tax are attributable solely to the exercising holder, the member representing such holder or another member which acts on its behalf as a clearing member of The Options Clearing Corporation, the tax shall be the responsibility of the exercising holder, and (B) in the case of a put option contract where the incidents of the tax are attributable solely to the seller (writer) to whom the exercise notice is assigned, the member representing such seller (writer) or another member which acts on its behalf as a clearing member of The Options Clearing Corporation, the tax shall be the responsibility of such seller (writer). Each delivery of securities subject to such tax must be accompanied by a sales ticket stamped in accordance with the regulations of the State imposing such tax, or if required by applicable law, such tax shall be remitted by the clearing member having responsibility therefor to the clearing corporation through which it customarily pays stock transfer taxes, in accordance with the applicable rules of such clearing corporation.

(23) Tendering Procedures for Exercise of Options

(A) Exercise of Options Contracts

(i) Subject to the restrictions established pursuant to paragraphs (b)(4) and (b)(8) hereof and such other restrictions that may be imposed by FINRA, The Options Clearing Corporation or an options exchange pursuant to appropriate rules, an outstanding option contract issued by The Options Clearing Corporation may be exercised during the time period specified in the rules of The Options Clearing Corporation by the tender to The Options Clearing Corporation of an exercise notice in accordance with rules of The Options Clearing Corporation. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account the option contract is carried. Members may establish fixed procedures as to the latest time they will accept exercise instructions from customers.

(ii) Special procedures apply to the exercise of standardized equity options on the business day of their expiration, or, in the case of standardized equity options expiring on a day that is not a business day, on the last business day before their expiration ("expiring options"). Unless waived by The Options Clearing Corporation, expiring standardized equity options are subject to the Exercise-by-Exception ("Ex-by-Ex") procedure under The Options Clearing Corporation Rule 805. This Rule provides that, unless contrary instructions are given, standardized equity option contracts that are in-the-money by specified amounts shall be automatically exercised. In addition to The Options Clearing Corporation rules, the following FINRA requirements apply with respect to expiring standardized equity options. Option holders desiring to exercise or not exercise expiring standardized equity options must either:

a. take no action and allow exercise determinations to be made in accordance with The Options Clearing Corporation's Ex-by-Ex procedure where applicable; or

b. submit a "Contrary Exercise Advice" by the deadline specified below.

(iii) Exercise cut-off time. Option holders have until 5:30 p.m. Eastern Time ("ET") on the business day of expiration, or, in the case of a standardized equity option expiring on a day that is not a business day, on the business day immediately prior to the expiration date to make a final exercise decision to exercise or not exercise an expiring option. Members may not accept exercise instructions for customer or non-customer accounts after 5:30 p.m. ET.

(iv) Submission of Contrary Exercise Advice. A Contrary Exercise Advice is a form approved by the national options exchanges, FINRA or The Options Clearing Corporation for use by a member to submit a final exercise decision committing an options holder to either: (1) not exercise an option position which would automatically be exercised pursuant to The Options Clearing Corporation's Ex-by-Ex procedure; or (2) to exercise a standardized equity option position which would not automatically be exercised pursuant to The Options Clearing Corporation's Ex-by-Ex procedure. A Contrary Exercise Advice may be canceled by filing an "Advice Cancel" or resubmitted at any time up to the submission cut-off times specified herein. For customer accounts, members have until 7:30 p.m. ET to submit a Contrary Exercise Advice. For non-customer accounts, members have until 7:30 p.m. ET to submit a Contrary Exercise Advice if such member employs an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Members are required to manually submit a Contrary Exercise Advice by 5:30 p.m. ET for non-customer accounts if such members do not employ an electronic submission procedure with time stamp for the submission of exercise instructions by option holders. Each member shall establish fixed procedures to ensure secure time stamps in connection with their electronic systems employed for the recording of submissions to exercise or not exercise expiring options. For purposes of this Rule 2360(b)(23)(A), the terms "customer account" and "non-customer account" shall have the meanings as defined in The Options Clearing Corporation By-laws. Contrary Exercise Advices and/or Advice Cancels may be submitted by any member to:

a. a place designated for that purpose by any national options exchange of which it is a member and where the standardized equity option is listed;

b. a place designated for that purpose by any national options exchange that lists and trades the standardized equity option via a member of such exchange if the member is not a member of such exchange;

c. any national options exchange of which it is a member and where the standardized equity option is listed via The Options Clearing Corporation in a form prescribed by The Options Clearing Corporation; or

d. any national options exchange where the standardized equity option is listed via The Options Clearing Corporation in a form prescribed by The Options Clearing Corporation, provided the member is a member of The Options Clearing Corporation.

(v) In those instances when The Options Clearing Corporation has waived the Ex-by-Ex procedure for an options class, members must either:

a. submit to any of the places listed in subparagraphs (iv)a. through d. above, a Contrary Exercise Advice, within the time limits specified in subparagraph (iv) above if the holder intends to exercise the standardized equity option, or

b. take no action and allow the standardized equity option to expire without being exercised.

The applicable underlying security price in such instances will be as described in The Options Clearing Corporation Rule 805(1), which is normally the last sale price in the primary market for the underlying security. In cases where the Ex-by-Ex procedure has been waived for an options class, The Options Clearing Corporation rules require that members wanting to exercise such options must submit an affirmative Exercise Notice to The Options Clearing Corporation, whether or not a Contrary Exercise Advice has been filed.

(vi) Members that maintain proprietary or public customer positions in expiring standardized equity options shall take necessary steps to ensure that final exercise decisions are properly indicated to the relevant national options exchange with respect to such positions. Members that have accepted the responsibility to indicate final exercise decisions on behalf of another member also shall take necessary steps to ensure that such decisions are properly indicated to the relevant national options exchange. Members may establish a processing cut-off time prior to FINRA's exercise cut-off time at which they will no longer accept final exercise decisions in expiring standardized equity options from customers.

(vii) Members may effect or amend exercise decisions for standardized equity options after the exercise cut-off time (but prior to expiration) under the following circumstances:

a. in order to remedy mistakes or errors made in good faith;

b. to take appropriate action as the result of a failure to reconcile unmatched option transactions; or

c. where extraordinary circumstances restricted a customer's or member's ability to inform the respective member of such decisions (or a member's ability to receive such decisions) by the cut-off time.

The burden of establishing an exception for a proprietary or customer account of a member rests solely on the member seeking to rely on such exception.

(viii) In the event a national options exchange or The Options Clearing Corporation provides advance notice on or before 5:30 p.m. ET on the business day immediately prior to the business day of expiration, or, in the case of a standardized equity option expiring on a day that is not a business day, the business day immediately prior to the last business day before the expiration date, indicating that a modified time for the close of trading in standardized equity options on such business day of expiration, or, in the case of a standardized option expiring on a day that is not a business day, such last business day before expiration will occur, then the deadline for an option holder to make a final decision to exercise or not exercise an expiring option shall be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. ET deadline found in subparagraph (iii) above. However, members have until 7:30 p.m. ET to deliver a Contrary Exercise Advice or Advice Cancel to the places specified in subparagraphs (iv)a. through d. above for customer accounts and non-customer accounts where such member firm employs an electronic submission procedure with time stamp for the submission of exercise instructions. For non-customer accounts, members that do not employ an electronic procedure with time stamp for the submission of exercise instructions are required to manually deliver a Contrary Exercise Advice or Advice Cancel within 1 hour and 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. ET deadline found in subparagraph (iv) above.

(ix) The filing of a final exercise decision, exercise instruction, exercise advice, Contrary Exercise Advice or Advice Cancel required by subparagraph (A) hereof does not serve as a substitute to the effective notice required to be submitted to The Options Clearing Corporation for the exercise or non-exercise of expiring standardized equity options.

(x) Submitting or preparing an exercise instruction after the exercise cut-off time in any expiring standardized equity option on the basis of material information released after the exercise cut-off time is activity inconsistent with just and equitable principles of trade.

(xi) The exercise cut-off requirements contained in this subparagraph (A) do not apply to any currency option or standardized index option products listed on a national options exchange.

(B) In the event a member receives and acts on an exercise instruction (for its own proprietary account or on behalf of a customer's account) pursuant to an exception set forth in subparagraphs a., b., or c. of subparagraph (A)(vii) hereof, the member shall maintain a memorandum setting forth the circumstances giving rise to such exception and shall file a copy of the memorandum with the Market Regulation Department of the national options exchange trading the option, if it is a member of such exchange, or FINRA's Market Regulation Department if it is not a member of such exchange, no later than 12:00 p.m. ET, on the business day following that expiration. Such memorandum must additionally include the time when such final exercise decision was made or, in the case of a customer, received, and shall be subject to the requirements of SEA Rules 17a-3(a)(6) and 17a-4(b).

(C) Allocation of Exercise Assignment Notices.

(i) Each member shall establish fixed procedures for the allocation to customers of exercise notices assigned in respect of a short position in option contracts in such member's customer accounts. Such allocation shall be on a "first in-first out" or automated random selection basis that has been approved by FINRA or on a manual random selection basis that has been specified by FINRA. Each member shall inform its customers in writing of the method it uses to allocate exercise notices to its customer's accounts, explaining its manner of operation and the consequences of that system.

(ii) Each member shall report its proposed method of allocation to FINRA and obtain FINRA's prior approval thereof, and no member shall change its method of allocation unless the change has been reported to and been approved by FINRA. The requirements of this subparagraph (C) shall not be applicable to allocation procedures submitted to and approved by another self-regulatory organization having comparable standards pertaining to methods of allocation.

(iii) Each member shall preserve for a three-year period sufficient work papers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise assignment notices is in fact being accomplished.

(D) Delivery and Payment

Delivery of the shares of an underlying security upon the exercise of an option contract and payment of the aggregate exercise price in respect thereto, shall be effected in accordance with the rules of The Options Clearing Corporation. As promptly as practicable after the exercise of an option contract by a customer, the member shall require the customer to make full cash payment of the aggregate exercise price in the case of a call option contract or to deposit the underlying stock in the case of a put option contract, or, in either case, to make the required margin deposit in respect thereto if such transaction is effected in a margin account, in accordance with the applicable regulations of the Federal Reserve Board and Rule 4210. As promptly as practicable after the assignment to a customer of an exercise notice, the member shall require the customer to deposit the underlying stock in the case of a call option contract if the shares of the underlying security are not carried in the customer's account, or to make full cash payment of the aggregate exercise price in the case of a put option contract, or, in either case, to make the required market deposit in respect thereof, if such transaction is effected in a margin account, in accordance with Rule 4210 and the applicable regulations of the Federal Reserve Board.

(24) Options Transactions and Reports by Market Makers in Listed Securities

Every member who is an off-board market maker in a security listed on a national securities exchange shall report to FINRA in accordance with such procedures as may be prescribed by the Board of Governors, transactions involving 50 or more option contracts on such listed securities which are either directly for the benefit of (A) the member or (B) any employee, partner, officer, or director of the member who, by virtue of his position with the member, is directly involved in the purchase or sale of the underlying security for the firm's proprietary account(s) or is directly responsible for supervision of such persons; or who by virtue of his position in the firm, is authorized to, and regularly does, obtain information on the proprietary account(s) of the member in which the underlying security is traded. This subparagraph shall apply to all options transactions including those executed on an exchange to which the member may belong.

(c) Portfolio Margining Disclosure Statement and Acknowledgement

The special written disclosure statement describing the nature and risks of portfolio margining, and acknowledgement for an eligible participant signature, required by Rule 4210(g)(5)(C) shall be in a format prescribed by FINRA or in a format developed by the member, provided it contains substantially similar information as in the prescribed FINRA format and has received the prior written approval of FINRA.

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

.01 Position Limit Examples

The following examples illustrate the operation of position limits established by Rule 2360(b)(3) (all examples assume a position limit of 25,000 contracts and that the options are standardized options):

(a) Customer A, who is long 25,000 XYZ calls, may at the same time be short 25,000 XYZ calls, since long and short positions in the same class of options (i.e., in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of paragraph (b)(3).

(b) Customer B, who is long 25,000 XYZ calls, may at the same time be long 25,000 XYZ puts. Paragraph (b)(3) does not require the aggregation of long call and long put (or short call and short put) positions, since they are on opposite sides of the market.

(c) Customer C, who is long 20,000 XYZ calls, may not at the same time be short more than 5,000 XYZ puts, since the 25,000 contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security. Similarly, if Customer C is also short 20,000 XYZ calls, he may not at the same time be long more than 5,000 puts, since the 25,000 contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

(d) Customer D, who is short 2,000,000 shares of XYZ, may be long up to 45,000 XYZ calls, since the "hedge" exemption contained in paragraph (b)(3)(A)(ii)a.1. permits Customer D to establish an options position up to 25,000 contracts in size. In this instance, 25,000 of the 45,000 contracts are permissible under the basic 25,000 position limit and the remaining 20,000 contracts are permissible because they are hedged by the 2,000,000 short stock position.

.02 In connection with the delta hedging exemptions for members and non-member affiliates in Rule 2360(b)(3)(A)(ii)b., FINRA will require broker-dealer(s) to satisfy the following conditions in order for FINRA to deem no control relationship, in accordance with Rule 2360(a)(6), to exist between affiliates and between separate and distinct trading units within the same entity:

- operate the trading unit(s) requesting non-aggregation treatment independently of other trading units controlled by the broker-dealer, and disclose to FINRA the trading objective of the trading unit(s) requesting non-aggregation treatment;
- create internal firewalls and information barriers to segregate the trading unit(s) receiving non-aggregation treatment from other trading units controlled by the broker-dealer to prevent the flow of information (e.g., trades, positions, trading strategies);
- conduct all trading activity of the trading unit(s) requesting non-aggregation in a segregated account, which shall be reported to FINRA as such;
- maintain regulatory compliance oversight and internal controls and procedures addressing the non-aggregation arrangement;
- retain written records of information concerning the non-aggregated account, including, but not limited to, trading personnel, names of personnel making trading decisions, unusual trading activities, disciplinary action resulting from breach of the broker-dealer's systems firewalls and information-sharing policies, and the transfer of securities between the broker-dealer's non-aggregated accounts, which information shall be promptly made available to FINRA upon its request;
- promptly provide to FINRA a written report at such time there is any material change with respect to the non-aggregated account, which FINRA will use as a basis to reexamine its determination of non-aggregation; and
- provide a written acknowledgement that FINRA reserves the right to (1) impose additional restrictions and conditions with respect to the granting and removal of non-aggregation, and (2) freeze any position above the applicable position limit if FINRA determines that aggregation has become necessary due to changed circumstances.

Generally, the presumption of control in these types of arrangements will become easier to rebut as the physical separation between the trading units increases. For example, FINRA will require that trading units located on the same floor of a building be physically isolated from each other to ensure that no inappropriate communication will take place between individuals staffed in the applicable trading units.

.03 Position Limits for Exchange-Traded Funds

The position limit for a conventional option contract on an ETF that is not listed in Rule 2360(b)(3)(A)(iii)a.6. and does not also underlie a standardized option shall be the basic limit of 25,000 contracts. To qualify for a position limit of more than 25,000 contracts, a member must apply for an increased position limit in accordance with Rule 2360(b)(3)(A)(iii)b.

Cross Reference—

Rule 2220, Options Communications with the Public

Amended by SR-FINRA-2022-007 eff. March 29, 2022.
Amended by SR-FINRA-2020-021 eff. July 14, 2020.
Amended by SR-FINRA-2019-009 eff. May 8, 2019.
Amended by SR-FINRA-2018-034 eff. Aug. 31, 2018.
Amended by SR-FINRA-2014-051 eff. Dec. 11, 2014.
Amended by SR-FINRA-2014-045 eff. Dec. 1, 2014.
Amended by SR-FINRA-2014-027 eff. July 17, 2014.
Amended by SR-FINRA-2013-055 eff. Dec. 23, 2013.
Amended by SR-FINRA-2013-027 eff. Nov. 7, 2013.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2011-036 eff. July 29, 2011.
Amended by SR-FINRA-2010-060 eff. Dec. 15, 2010.
Amended by SR-FINRA-2009-041 eff. Sep. 7, 2010.
Amended by SR-FINRA-2009-032 eff. May 11, 2009.
Amended by SR-FINRA-2008-032 and SR-FINRA-2009-005 eff. Feb. 17, 2009.
Amended by SR-FINRA-2007-035 eff. June 23, 2008.
Amended by SR-FINRA-2008-007 eff. Feb. 28, 2008.
Amended by SR-NASD-2007-044 eff. Feb. 1, 2008.
Amended by SR-FINRA-2007-002 eff. July 31, 2007.
Amended by SR-NASD-2007-013 eff. April 2, 2007.
Amended by SR-NASD-2006-007 eff. Feb. 12, 2007.
Amended by SR-NASD-2007-007 eff. Jan. 25, 2007.
Amended by SR-NASD-2006-100 eff. Oct. 26, 2006.
Amended by SR-NASD-2006-099 eff. Oct. 12, 2006.
Amended by SR-NASD-2006-097 eff. Aug. 10, 2006.
Amended by SR-NASD-2006-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2006-025 eff. Feb. 16, 2006.
Amended by SR-NASD-2005-097 eff. Aug. 10, 2005.
Amended by SR-NASD-2005-040 eff. March 30, 2005.
Amended by SR-NASD-2004-153 eff. Feb. 28, 2005.
Amended by SR-NASD-2002-134 eff. Feb. 3, 2003.
Amended by SR-NASD-00-36 eff. Feb. 15, 2001.
Amended by SR-NASD-98-92 eff. Jan. 11, 1999.
Amended by SR-NASD-98-78 eff. Dec. 21, 1998.
Amended by SR-NASD-98-23 eff. June 12, 1998.
Amended by SR-NASD-98-02 eff. April 14, 1998.
Amended by SR-NASD-98-15 eff. March 19, 1998.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-95-55 eff. Jan. 22, 1996.
Amended by SR-NASD-95-56 eff. Dec. 29, 1995.
Amended by SR-NASD 94-60 eff. June 21, 1995.
Amended by SR-NASD-94-54 eff. Apr. 20, 1995.
Amended by SR-NASD-93-03 eff. Nov. 1, 1994.
Amended by SR-NASD-94-27 eff. Aug. 19, 1994.
Amended by SR-NASD-94-07 eff. Mar. 18, 1994.
Amended to include former Appendix E by SR-NASD-93-48 eff. Mar. 8, 1994.
Amended by SR-NASD-93-73 eff. Jan. 5, 1994.
Amended by SR-NASD-88-54 eff. Feb. 9, 1990;
Amended by SR-NASD-89-17 eff. June 28, 1989; Jan. 7, 1987; Amended by SR-NASD-86-23 eff. Oct. 6, 1986; Amended by SR-NASD-85-21; SR-NASD-85-10; SR-NASD-85-05 & SR-NASD-80-10 eff. Sept. 13, 1985. Amended by SR-NASD-80-26 eff. Apr. 1, 1985; Nov. 30, 1983; Aug. 2, 1983; July 5, 1983; Dec. 15, 1981; Dec. 7, 1981; Jan. 15, 1981.
Amended by SR-NASD-80-14 eff. Oct. 22, 1980.
Amended by SR-NASD-80-07 eff. May 16, 1980.
Amended by SR-NASD-79-16 eff. May 15, 1980.
Amended by SR-NASD-77-23 eff. Nov. 15, 1978.
Adopted by SR-NASD-76-08 eff. Jan. 13, 1977.

Selected Notices: 76-8, 76-24, 76-31, 77-5, 78-50, 78-54, 79-41, 79-42, 79-43, 80-22, 80-23, 80-29, 80-36, 80-46, 80-55, 81-04, 82-42, 85-18, 86-74, 89-64, 93-15, 94-24, 94-46, 95-25, 95-47; 96-15, 99-20; 01-01, 05-06, 06-54, 07-03, 07-11, 07-37, 08-04, 08-28, 08-78, 10-36, 13-39.

VERSIONS

Mar 29, 2022 onwards

2370. Security Futures

(a) For purposes of this Rule, the term "security future" shall have the definition specified in Section 3(a)(55) of the Exchange Act.

(b) Requirements

(1) General

(A) Applicability — This Rule shall be applicable to the trading of security futures.

(B) Subparagraph (15) shall apply only to security futures carried in securities accounts.

(C) Except to the extent that specific provisions in this Rule govern, or unless the context otherwise requires, the provisions of the FINRA By-Laws and rules and all other interpretations and policies of the Board of Governors shall also be applicable to the trading of security futures.

(2) Definitions

(A) The terms "Control," and "Controls," "Is Controlled by" or "Is Under Common Control With" shall have the same meanings as in Rule 2360.

(B) The term "principal qualified to supervise security futures activities" means a Registered Options Principal who, consistent with Rule 1220(a), has either completed a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures or has passed a revised qualification examination for Registered Options Principals that covers security futures, or a Limited Principal-General Securities Sales Supervisor who, consistent with Rule 1220(a), has either completed a firm-element continuing education requirement that addresses security futures and a principal's responsibilities for security futures or has passed a revised qualification examination for Limited Principal-General Securities Sales Supervisor.

(3) Reserved

(4) Reserved

(5) Reserved

(6) Reserved

(7) Reserved

(8) Restrictions on Security Futures Transactions

FINRA may impose from time to time such restrictions on security futures transactions that it determines are necessary in the interest of maintaining a fair and orderly market in security futures, or in the underlying securities covered by such security futures, or otherwise necessary in the public interest or for the protection of investors. During the period of any such restriction, no member shall effect any security futures transaction in contravention of such restriction.

(9) Reserved

(10) Reserved

(11) Delivery of Security Futures Risk Disclosure Statement

(A) Every member shall deliver the current security futures risk disclosure statement to each customer at or prior to the time such customer's account is approved for trading security futures. Thereafter, each new or revised security futures risk disclosure statement shall be distributed to every customer having an account approved for such trading or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. FINRA will advise members when a new or revised current security futures risk disclosure statement is available.

(B) Where a broker or dealer enters its orders with another member in a single omnibus account, the member holding the account shall take reasonable steps to assure that such broker or dealer is furnished reasonable quantities of the current security futures risk disclosure statement.

(C) Where an introducing broker or dealer enters orders for its customers with, or clears transactions through, a member on a fully disclosed basis and that member carries the accounts of such customers, the responsibility for delivering the current security futures risk disclosure statement as provided in this paragraph (b)(11) shall rest with the member carrying the accounts. However, such member may rely upon the good faith representation of the introducing broker or dealer that the current security futures risk disclosure statement has been delivered in compliance with paragraph (b)(11).

(12) Reserved

(13) Reserved

(14) Reserved

(15) Statements of Account

Statements of account showing security and money positions, entries, interest charges, and any special charges that have been assessed against such account during the period covered by the statement shall be sent no less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to a security futures contract and quarterly to all customers having an open security futures position or money balance. Interest charges and any special charges assessed during the period covered by the statement need not be specifically delineated if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to security futures customers having a general (margin) account, such statements shall also provide the market price, and market-to-market value and nominal value of each security futures position and other security positions in the general (margin) account (i.e., the market-to-market value of all security futures positions and the market value of all other security positions), the total value of all positions in the account, the outstanding debit or credit balance in the account, and the general (margin) account equity. The statements shall bear a legend stating that further information with respect to commissions and other charges related to the execution of security futures transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request. The statements shall also bear a legend requesting the customer promptly to advise the member of any material change in the customer's investment objectives or financial situation.

(16) Opening of Accounts

(A) Approval Required

No member or person associated with a member shall accept an order from a customer to purchase or sell a security future, or approve the customer's account for the trading of security futures, unless the broker or dealer furnishes or has furnished to the customer the appropriate security futures risk disclosure statement and the customer's account has been approved for security futures trading in accordance with the provisions of subparagraphs (B) through (D) hereof.

(B) Diligence in Opening Accounts

In approving a customer's account for security futures trading, a member or any person associated with a member shall exercise due diligence to ascertain the essential facts relative to the customer, the customer's financial situation and investment objectives. Members shall establish specific minimum net equity requirements for initial approval and maintenance of customers' security futures accounts. Based upon such information, a principal qualified to supervise security futures activities shall specifically approve or disapprove in writing the customer's account for security futures trading. For account approvals, the written record shall include the reasons for approval.

(i) With respect to security futures customers who are natural persons, members shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

a. Investment objectives (e.g., safety of principal, income, growth, trading profits, or speculation);

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

c. Estimated annual income from all sources;

d. Estimated net worth (exclusive of family residence);

e. Estimated liquid net worth (cash, securities, or other);

f. Marital status and number of dependents;

g. Age; and

h. Investment experience and knowledge (e.g., number of years, size, frequency and type of transactions) for futures, commodities, options, stocks, bonds, and other financial instruments.

(ii) In addition, a customer's account records shall contain the following information, if applicable:

a. Source or sources of background and financial information (including estimates) concerning the customer;

b. Discretionary authorization agreement on file, name, relationship to customer, and experience of person holding trading authority;

c. Date disclosure document(s) furnished to customer;

d. Name of registered representative;

e. Name of principal approving account and date of approval; and

f. Dates of verification of currency of account information.

(iii) Members should consider using a standard account approval form to ensure the receipt of all the required information.

(iv) Refusal of a customer to provide any of the information specified in subparagraph (i) shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with the other information available in determining whether to approve the account for security futures trading.

(v) A record of the information obtained pursuant to this subparagraph (B) and of the approval or disapproval of each account shall be maintained by the member as part of its records in accordance with paragraph (b)(17) herein.

(C) Verification of Customer Background and Financial Information

For every natural person whose account has been approved for security futures trading, the background and financial information upon which the account was approved shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for security futures trading. This verification requirement shall not apply if the background and financial information is included in the customer's account agreement or if the member has previously verified the customer's information in connection with an options account. A copy of the background and financial information on file with a member also shall be sent to the customer for verification within fifteen (15) days after the member becomes aware of any material change in the customer's financial situation.

Members shall satisfy the initial and subsequent verification of customer background and financial information by sending to the customer the information required in subparagraphs (B)(i)(a) through (i)(f) hereof, as contained in the member's records and providing the customer with an opportunity to correct or complete the information. In all cases, absent advice from the customer to the contrary, the information will be deemed to be verified.

(D) Account Agreement

Within fifteen (15) days after a customer's account has been approved for security futures trading, a member shall obtain from the customer a written agreement that the customer is aware of and agrees to be bound by FINRA rules applicable to the trading of security futures and, that the customer has received a copy of the current security futures risk disclosure statement. In addition, the customer shall indicate on such written agreement that the customer is aware of and agrees not to violate applicable security futures position limits.

(17) Maintenance of Records

(A) In addition to the requirements of Rules 4511, and 4513, every member shall maintain and keep current a separate central log, index, or other file for all security futures-related complaints, through which these complaints can easily be identified and retrieved. The central file shall be located at the principal place of business of the member or such other principal office as shall be designated by the member. At a minimum, the central file shall include:

(i) identification of complainant;

(ii) date complaint was received;

(iii) identification of registered representative servicing the account;

(iv) a general description of the matter complained of; and

(v) a record of what action, if any, has been taken by the member with respect to the complaint.

For purposes of this subparagraph, the term "security futures-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with security futures. Each security futures-related complaint received by a branch office of a member shall be forwarded to the office in which the separate, central file is located not later than 30 days after receipt by the branch office that is the subject of the complaint. A copy of every security futures-related complaint shall also be maintained at the branch office that is the subject of the complaint.

(B) Background and financial information of customers who have been approved for security futures trading shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of security futures customers shall also be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable. Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

(18) Discretionary Accounts

(A) Authorization and Approval

(i) No member or person associated with a member shall exercise any discretionary power with respect to trading in security futures in a customer's account, or accept orders for security futures for an account from a person other than the customer, except in compliance with the provisions of Rule 3260 and unless:

a. The written authorization of the customer required by Rule 3260 shall specifically authorize security futures trading in the account; and

b. the account shall have been accepted in writing by a principal qualified to supervise security futures activities.

(ii) When analyzing an account to determine if it should be approved for security futures trading, each firm shall designate specific principals qualified to supervise security futures activities to review discretionary accounts. A principal other than the principal who accepted the account shall have a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by a principal qualified to supervise security futures activities who is not exercising the discretionary authority. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of security futures contracts in a specified security shall be executed, except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 4512(c), pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

(iii) Any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require specific principals qualified to supervise security futures activities who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.

(B) Record of Transactions

A record shall be made of every transaction in security futures contracts in respect to which a member or person has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the security futures contracts, the price of the contract, and the date and time when such transaction was effected.

(C) Security Futures Programs

Where the discretionary account uses security futures programs involving the systematic use of one or more security futures strategies, the customer shall be furnished with a written explanation of the nature and risks of such programs.

(19) Suitability

(A) No member or person associated with a member shall recommend to any customer any transaction or trading strategy for the purchase or sale of a security future unless such member or person associated with the member has reasonable grounds to believe upon the basis of information furnished by the customer after reasonable inquiry by the member or person associated with the member concerning the customer's investment objectives, financial situation and needs, and any other information known by the member or associated person, that the recommended transaction or trading strategy is not unsuitable for the customer.

(B) No member or person associated with a member shall recommend to a customer a transaction in any security future unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the security future.

(20) Reserved

(21) Violation of By-Laws and Rules of FINRA or a Registered Clearing Agency

(A) In FINRA disciplinary proceedings, a finding of violation of any provision of the FINRA rules, regulations, or by-laws of a registered clearing agency under Section 17A(b)(8) of the Exchange Act by any member or person associated with a member engaged in security futures transactions cleared by such registered clearing agency, may be deemed to be conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010.

(B) In FINRA disciplinary proceedings, a finding of violation of any provision of the FINRA rules, regulations or By-Laws by any member or person associated with a member engaged in security futures transactions may be deemed to be conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010.

(22) Reserved

(23) Reserved

(24) Security Futures Transactions and Reports by Market Makers in Listed Securities

Every member that is an off-board market maker in a security listed on a national securities exchange shall report to FINRA in accordance with such procedures as may be prescribed by the Board of Governors, transactions involving 50 or more security futures contracts on such listed securities that are either directly for the benefit of (A) the member or (B) any employee, partner, officer, or director of the member who, by virtue of his or her position with the member, is directly involved in the purchase or sale of the underlying security for the firm's proprietary account(s) or is directly responsible for supervision of such persons; or who by virtue of his or her position in the firm, is authorized to, and regularly does, obtain information on the proprietary account(s) of the member in which the underlying security is traded. This subparagraph shall apply to all security futures transactions including those executed on an exchange to which the member may belong.

(25) Trading Ahead of Customer Orders

Every member shall exercise due care to avoid trading ahead of a customer's security futures order. A member must exercise the due care required by this subparagraph when the member has gained knowledge of or reasonably should have gained knowledge of the customer's order prior to the transmission to a securities exchange of the member's order for a proprietary account, or for any account in which it or any person associated with it is directly or indirectly interested.

Amended by SR-FINRA-2019-009 eff. May 8, 2019.
Amended by SR-FINRA-2011-065 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-045 eff. Oct. 7, 2010.
Amended by SR-FINRA-2008-032 and SR-FINRA-2009-005 eff. Feb. 17, 2009.
Adopted by SR-NASD-2002-40 eff. Oct. 15, 2002.

Selected Notice: 08-78.

‹ 2360. OPTIONS UP 3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS ›

VERSIONS

May 08, 2019 onwards