

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59921; File No. SR-FINRA-2009-028)

May 14, 2009

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“SEA” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 22, 2009, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) with certain changes as FINRA Rule 2231 in the new consolidated FINRA rulebook (“Consolidated FINRA Rulebook”).³ The proposed rule change would also delete

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (“Dual Members”). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

NYSE Rule 409⁴ (Statements of Accounts of Customers), except for paragraph (f), and certain of its related interpretations.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook, FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) with certain changes as FINRA Rule 2231 in the Consolidated FINRA Rulebook. The proposed rule change would also delete: (1) NYSE Rule 409 (Statements of Accounts to Customers), except for paragraph (f) and its related supplementary material; and (2) NYSE Rule Interpretations 409(a) and 409(b), except for paragraphs 409(a)/01 and 409(a)/03, as the rule and its related interpretations are, in main part, duplicative of NASD Rule 2340. However, as further described herein, the proposed rule change would incorporate certain provisions of NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

⁴ For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

PROPOSED FINRA RULE 2231 (CUSTOMER ACCOUNT STATEMENTS)

Frequency of Delivery of Account Statements and Disclosures

NASD Rule 2340 generally requires each general securities member to send customers at least once each calendar quarter account statements containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent. NYSE Rule 409(a) similarly requires member organizations to send customer account statements at least once each calendar quarter.

In contrast, proposed FINRA Rule 2231(a) would impose an additional requirement that each general securities member send account statements at least once every calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer, and continue to require that a statement be sent at least once every calendar quarter to each customer whose account had a security position or money balance during the period since the last statement was sent to the customer.

Proposed FINRA Rule 2231 would adopt the definitions of the terms “general securities member” and “account activity” set forth in NASD Rule 2340. A “general securities member” would be 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).⁵ However, as is the case under NASD Rule 2340 currently, a member that does not carry customer accounts and does not hold customer funds or securities would continue to be exempt from the provisions of FINRA Rule 2231. “Account activity” would continue to be defined broadly and would include, but not be limited to, purchases, sales, interest

⁵ 17 CFR 240.15c3-1(a).

credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries and/or journal entries relating to securities or funds in the possession or control of the member.

FINRA believes the proposed amendment better reflects current industry practice as a significant number of members already send customers monthly account statements through their clearing firms. FINRA believes that receipt of monthly statements will allow customers to review their statements in a timely manner for errors, possibly identify theft or other potential problems.

Proposed FINRA Rule 2231(a) would also retain the requirement in NASD Rule 2340(a) (and NYSE Rule 409(e)) to include on customer account statements a statement advising customers to report promptly any inaccuracy or discrepancy in their account to the introducing firm and clearing firm (where there are two different firms) and to re-confirm any oral communications in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act.

DVP/RVP Securities on Account Statements

Proposed FINRA Rule 2231(b) would incorporate without substantive change the provisions in NASD Rule 2340(b) (and NYSE Rule 409(a)) providing that account statements do not need to be sent to a customer if the customer's account is carried solely for execution on a Delivery versus Payment/Receive versus Payment ("DVP/RVP") basis, subject to certain specified conditions. The rule would continue to provide that it does not qualify or condition the obligations of members under SEA Rule 15c3-2 concerning quarterly notices of free credit balances on statements.⁶

⁶ 17 CFR 240.15c3-2.

Value of DPP/REIT Securities on Account Statements

Proposed FINRA Rule 2231(c) would incorporate without substantive change the provisions in NASD Rule 2340(c) regarding the disclosure of values for unlisted or illiquid direct participation program (“DPP”) and real estate investment trust (“REIT”) securities on customer account statements. The proposed rule would require that estimated values for DPP/REIT securities must be disclosed under certain circumstances and describe how such estimated values must be determined. NYSE Rule 409 does not include the requirement regarding disclosure of values for DPPs and REITS.

Definitions

Proposed FINRA Rule 2231(d) would incorporate without substantive change the definitions of significant terms used in the rule, such as account activity, general securities member, direct participation program, real estate investment trust, annual report and DVP/RVP account (this last term is also defined in NYSE Rule 409(a)).

Exemptions

Proposed FINRA Rule 2231(e) would incorporate without substantive change the provision in NASD Rule 2340(e) authorizing FINRA to exempt members from the provisions of the rule pursuant to the Rule 9600 Series.

PROPOSED SUPPLEMENTARY MATERIALS TO FINRA RULE 2231

FINRA is proposing to adopt the following provisions as supplementary materials to FINRA Rule 2231. As further described below, these provisions are adopted largely from NYSE Rule 409 and its related interpretations.

Proposed Supplementary Material .01 (Transmission of Customer Account Statements to Other Persons or Entities)

This provision, which is based in part on NYSE Rule 409(b), would expressly require a firm to obtain written instructions from the customer in order to send/deliver customer statements, confirmations or other communications to other persons or entities.

Proposed Supplementary Material .02 (Use of Electronic Media to Satisfy Delivery Obligations)

This provision would allow a firm to satisfy its delivery obligations under the rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes. This provision is consistent with prior guidance issued by FINRA on the use of electronic media to satisfy delivery obligations.⁷

Proposed Supplementary Material .03 (Information to be Disclosed on Statement)

This provision, which is based on NYSE Rule Interpretation 409(a)/02, would require the following items to be prominently disclosed on the front of the statement: (i) the identity of the introducing and clearing firm (if different) and their respective contact information for customer service (though the identity of the clearing firm and its contact information may appear on the back of the statement provided such information is in “bold” or “highlighted” letters); (ii) that the clearing firm is a member of SIPC; and (iii) the opening and closing balances for the account.

⁷ See NASD Notice to Members 98-3 (January 1998).

Proposed Supplementary Material .04 (Assets Externally Held and Included on Statements Solely as a Service to Customers)

This provision, which is based on NYSE Rule Interpretation 409(a)/04, would provide that account statements must clearly indicate those instances where certain assets are externally held but included on the statement as a courtesy.

Proposed Supplementary Material .05 (Use of Logos, Trademarks, etc.)

This provision, which is based on NYSE Rule Interpretation 409(a)/05, would regulate the use of trademarks and logos of other persons on account statements.

Proposed Supplementary Material .06 (Use of Summary Statements)

This provision, which is based on NYSE Rule Interpretation 409(a)/06, would regulate the use of aggregated account statements for a customer who has accounts with other persons.

ELIMINATED PROVISIONS OF NYSE RULE 409

FINRA is proposing to delete NYSE Rule 409 in its entirety (except for NYSE Rule 409(f) which will be reviewed as part of a later phase of the rulebook consolidation process).⁸ The following describes certain provisions that are found in NYSE Rule 409 and its related interpretations that would not be adopted in proposed FINRA Rule 2231:

⁸ NYSE Rule 409(f) states “[c]onfirmations of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall clearly set forth with a suitable legend the settlement date of each transaction. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received. (See SEC Rule 10b-10).”

Duplicate Account Statements

NYSE Rule 409(b) contains provisions prohibiting, without NYSE's consent, the delivery of statements, confirmations or other communications to non-member customers (1) in care of a person holding power of attorney over the customer's account unless the customer has provided written instructions to send such confirmations, statements or communications to such person, or duplicate copies are sent to the customer at some other address designated in writing; or (2) at the address of any member or in care of any partner, stockholder who is actively engaged in the member's business or employee of the member.

NYSE Rule 409(g) also provides that members carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them.

NASD Rule 2340 does not contain a counterpart to either provision. As noted above, proposed supplementary material .01 to proposed FINRA Rule 2231 is based in part on NYSE Rule 409(b), but eliminates the reference to non-member customers and requires that a member have written instructions from a customer to send communications relating to the customer's account to any third parties designated by the customer. FINRA is proposing to eliminate NYSE Rule 409(g) because it believes that the provision generally advising members to send duplicate account statements to guarantors, absent contrary instructions from the guarantor, need not be incorporated into proposed FINRA Rule 2231, and the provision's purpose is better addressed by the

general requirement described above to obtain written instructions from the customer to send customer statements to any third parties.

Legends on Account Statements

NYSE Rule 409(e)(1) requires the inclusion of a legend on all account statements that notifies a customer that the firm's financial statements are available for inspection at its offices or a copy can be mailed upon request. FINRA is proposing to eliminate this requirement in light of existing requirements under SEA Rule 17a-5(c),⁹ which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and NASD Rule 2270 (Disclosure of Financial Condition to Customers), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon request. FINRA will consider NASD Rule 2270 as part of a later phase of the rulebook consolidation process.

NYSE Supplementary Material and Interpretations to be Deleted

FINRA is proposing to eliminate NYSE Rule Interpretation 409(b)/01 (Standards for Holding Mail for Foreign Customers), which provides guidelines for holding confirmations, statements and other communications for foreign customers. FINRA is addressing members' obligations with respect to customer mail as part of the consolidated FINRA rules governing supervision and the related proposal to adopt FINRA Rule 3150 (Holding of Customer Mail).¹⁰

⁹ 17 CFR 240.17a-5(c).

¹⁰ See Regulatory Notice 08-24 (May 2008). FINRA is not proposing to eliminate the following NYSE Rule Interpretations as part of this rule filing: 409(a)/01 (Applicability), which provides that the member firm carrying the account is responsible for compliance with the rule unless responsibility has been allocated

TECHNICAL CHANGES

In addition, the proposal reflects certain technical, non-substantive amendments to NASD Rule 2340 to change all references to “NASD” to “FINRA,” and to change all references to “SEC” Rules to “SEA” Rules.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide customers with critical information regarding their accounts and will allow them to review their statements in a timely manner, while also clarifying and streamlining the customer account rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

to a non-member broker-dealer carrying organization pursuant to an approved carrying agreement; and 409(a)/03 (Use of Third Party Agents), which regulates the use of third party agents to prepare and/or transmit statements. These interpretations will be reviewed as part of a later phase of the rulebook consolidation process.

¹¹ 15 U.S.C. 78q-3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-028 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-FINRA-2009-028 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).