

# 3160. Networking Arrangements Between Members and Financial Institutions

The Rule

Notices

## (a) Standards for Member Conduct

Except as otherwise provided in this Rule, a member that is a party to a networking arrangement under which the member conducts broker-dealer services on or off the premises of a financial institution is subject to the following requirements:

### (1) Setting

A member that conducts broker-dealer services on the premises of a financial institution shall:

- (A) be clearly identified as the person providing broker-dealer services and shall distinguish its broker-dealer services from the services of the financial institution;
- (B) conduct its broker-dealer services in an area that displays clearly the member's name; and
- (C) to the extent practicable, maintain its broker-dealer services in a location physically separate from the routine retail deposit-taking activities of the financial institution.

### (2) Networking Agreements

(A) Networking arrangements between a member and a financial institution shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements and include all broker-dealer obligations, as applicable, set forth in Rule 701 of SEC Regulation R. Independent of their contractual obligations, members shall comply with all broker-dealer obligations, as applicable, under Rule 701 of SEC Regulation R.

(B) The member shall ensure that the written agreement stipulates that supervisory personnel of the member and representatives of the SEC and FINRA will be permitted access to the financial institution's premises where the member conducts broker-dealer services, as applicable, in order to inspect the books and records and other relevant information maintained by the member with respect to its broker-dealer services.

### (3) Customer Disclosure

(A) At or prior to the time that a customer account is opened by a member that is a party to a networking arrangement, the member shall disclose in writing to each customer that the broker-dealer services are being provided by the member and not by the financial institution, and that the securities products purchased or sold in a transaction are:

- (i) not insured by the Federal Deposit Insurance Corporation ("FDIC");
- (ii) not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and
- (iii) subject to investment risks, including possible loss of the principal invested.

(B) The disclosures required by paragraph (a)(3)(A) of this Rule also shall be made orally by a member that is a party to a networking arrangement for any customer account opened on the premises of a financial institution.

### (4) Communications with the Public

(A) All member confirmations and account statements shall indicate clearly that the broker-dealer services are being provided by the member.

(B) Retail communications, including material published, or designed for use, in radio or television broadcasts, Automated Teller Machine ("ATM") screens, billboards, signs, posters and brochures, that announce the location of a financial institution where broker-dealer services are provided by the member or promote the name or services of the financial institution or that are distributed by the member on the premises of a financial institution or at such other location where the financial institution is present or represented shall include the disclosures required by paragraph (a)(3) of this Rule. The following legend may be used to provide these disclosures in retail communications, provided that such disclosures are displayed in a conspicuous manner:

- Not FDIC Insured
- No Bank Guarantee
- May Lose Value

(C) As long as the omission of the disclosures required by paragraph (a)(4)(B) of this Rule would not cause the retail communications to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:

- (i) radio broadcasts of 30 seconds or less;
- (ii) electronic signs, including billboard-type signs that are electronic, time and temperature signs and ticker tape signs, but excluding messages contained in such media as television, online services or ATMs; and
- (iii) signs, such as banners and posters, when used only as location indicators.

#### (5) Notifications of Terminations

A member shall promptly notify the financial institution if any associated person of the member who is employed by the financial institution is terminated for cause by the member.

#### (b) Definitions

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

- (1) "Financial institution" shall mean federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions required by law.
- (2) "Networking arrangement" shall mean a contractual or other written agreement between a member and a financial institution under which the member offers broker-dealer services on or off the premises of the financial institution.
- (3) "Broker-dealer services" shall mean investment banking or securities business as defined in Article I of the FINRA By-Laws.

Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.  
Amended by SR-FINRA-2010-023 eff. June 14, 2010.  
Amended by SR-FINRA-2009-047 eff. June 14, 2010.  
Adopted by SR-NASD-95-63 eff. Feb. 15, 1998.

**Selected Notices:** 94-94, 96-3, 97-26, 97-89, 10-21.

#### VERSIONS

Feb 04, 2013 onwards





## 3170. Tape Recording of Registered Persons by Certain Firms

### (a) Definitions

(1) For purposes of this Rule, the term "registered person" means any person registered with FINRA as a representative, principal, or assistant representative pursuant to the FINRA Rule 1200 Series or Municipal Securities Rulemaking Board (MSRB) Rule G-3.

(2) For purposes of this Rule, the term "disciplined firm" means:

(A) a member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the SEC revoking its registration as a broker-dealer;

(B) a futures commission merchant or introducing broker that has been formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or

(C) a futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the SEC revoking its registration as a broker or dealer.

(3) For purposes of this Rule, the term "disciplinary history" means a finding of a violation by a registered person in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Exchange Act Section 15(b)(4)(E); Exchange Act Section 15(c); Securities Act Section 17(a); SEA Rules 10b-5 and 15g-1 through 15g-9; NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) or FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) (only if the finding of a violation of NASD Rule 2110 or FINRA Rule 2010 is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, frontrunning, trading ahead of research reports or excessive markups), FINRA Rule 5280 (Trading Ahead of Research Reports), NASD Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) or FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), NASD Rule 2310 (Recommendations to Customers (Suitability)) or FINRA Rule 2111 (Suitability), NASD Rule 2330 (Customers' Securities or Funds) or FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts), NASD Rule 2440 or FINRA Rule 2121 (Fair Prices and Commissions), NASD Rule 3010 (Supervision) or FINRA Rule 3110 (Supervision) (failure to supervise only for both NASD Rule 3010 and FINRA Rule 3110), NASD Rule 3310 (Publication of Transactions and Quotations) or FINRA Rule 5210 (Publication of Transactions and Quotations), and NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) or FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security); and MSRB Rules G-19, G-30, and G-37(b) & (c).

(4) For purposes of this Rule, the term "tape recording" includes without limitation, any electronic or digital recording that meets the requirements of this Rule.

(5)

(A) For purposes of this Rule, the term "taping firm" means:

(i) A member with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(ii) A member with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years;

(iii) A member with at least twenty registered persons where 20% or more of its registered persons have been associated with one or more disciplined firms in a registered capacity within the last three years.

(B) For purposes of calculating the number of registered persons who have been associated with one or more disciplined firms in a registered capacity within the last three years pursuant to this subparagraph (5), members should not include registered persons who:

- (i) have been registered for an aggregate total of 90 days or less with one or more disciplined firms within the past three years; and
- (ii) do not have a disciplinary history.

#### **(b) Supervisory Procedures Regarding the Tape Recording of Conversations**

(1) Each member that either is notified by FINRA or otherwise has actual knowledge that it is a taping firm shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(2) A taping firm required to establish, maintain, and enforce special written procedures pursuant to this paragraph must establish and implement the procedures within 60 days of receiving notice from FINRA or obtaining actual knowledge that it is a taping firm.

(3) The procedures required by this paragraph shall include procedures for tape recording all telephone conversations between the taping firm's registered persons and both existing and potential customers and for reviewing the tape recordings to ensure compliance with applicable securities laws and regulations and applicable FINRA rules. The procedures must be appropriate for the taping firm's business, size, structure, and customers, and shall be maintained for a period of three years from the date that the taping firm establishes and implements the procedures.

(4) All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each taping firm shall catalog the retained tapes by registered person and date.

(5) By the 30th day of the month following the end of each calendar quarter, each taping firm subject to the requirements of this paragraph shall submit to FINRA a report on the taping firm's supervision of the telemarketing activities of its registered persons.

(c) A member that becomes a taping firm for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from FINRA pursuant to the provisions of paragraph (b)(1) or obtaining actual knowledge that it is a taping firm, provided the member promptly notifies FINRA's Department of Member Regulation in writing of its becoming subject to the Rule. Once the member has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph, a member must provide FINRA's Department of Member Regulation with written notice identifying the terminated person(s).

(d) Pursuant to the Rule 9600 Series, FINRA may, in exceptional circumstances, taking into consideration all relevant factors, exempt any taping firm unconditionally or on specified terms and conditions from the requirements of this Rule. A taping firm seeking an exemption must file a written application pursuant to the Rule 9600 Series within 30 days after receiving notice from FINRA or obtaining actual knowledge that it is a taping firm. A member that becomes a taping firm for the first time may elect to reduce its staffing levels pursuant to the provisions of paragraph (c) or, alternatively, to seek an exemption pursuant to paragraph (d), as appropriate. A taping firm may not seek relief from the Rule by both reducing its staffing levels pursuant to paragraph (c) and requesting an exemption.

Amended by SR-FINRA-2019-009 eff. May 8, 2019.

Adopted by SR-FINRA-2013-025 and amended by SR-FINRA-2014-023. eff. Dec. 1, 2014.

**Selected Notice:** 14-10.

#### **VERSIONS**

May 08, 2019 onwards

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## 3210. Accounts At Other Broker-Dealers and Financial Institutions

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

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

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

### ••• Supplementary Material: -----

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

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

(a) the spouse of the associated person;

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

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

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

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

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

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

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

Adopted by SR-FINRA-2015-029 eff. April 3, 2017.

**Selected Notice:** 16-22

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## 3220. Influencing or Rewarding Employees of Others

The Rule

Notices

(a) No member or person associated with a member shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.

(b) This Rule shall not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (a) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the member and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

(c) A separate record of all payments or gratuities in any amount known to the member, the employment agreement referred to in paragraph (b) and any employment compensation paid as a result thereof shall be retained by the member for the period specified by SEA Rule 17a-4.

Amended by SR-FINRA-2008-027 eff. Dec. 15, 2008.  
Amended by SR-NASD-92-40 eff. Dec. 28, 1992.  
Amended by SR-NASD-84-8 eff. June 20, 1984.  
Amended eff. Sept. 1, 1969.

**Selected Notices:** 82-44, 93-8, 08-57.



## 3230. Telemarketing

The Rule

Notices

### (a) General Telemarketing Requirements

No member or person associated with a member shall initiate any outbound telephone call to:

#### (1) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

- (A) the member has an established business relationship with the person pursuant to paragraph (m)(12)(A),
- (B) the member has received that person's prior express invitation or permission, or
- (C) the person called is a broker or dealer;

#### (2) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or

#### (3) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

### (b) National Do-Not-Call List Exceptions

A member making outbound telephone calls will not be liable for violating paragraph (a)(3) if:

#### (1) Established Business Relationship Exception

The member has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member;

#### (2) Prior Express Written Consent Exception

The member has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act) between the person and member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or

#### (3) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

### (c) Safe Harbor Provision

A member or person associated with a member making outbound telephone calls will not be liable for violating paragraph (a)(3) if the member or person associated with a member demonstrates that the violation is the result of an error and that as part of the member's routine business practice, it meets the following standards:

- (1) Written procedures. The member has established and implemented written procedures to comply with the national do-not-call rules;
- (2) Training of personnel. The member has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
- (3) Recording. The member has maintained and recorded a list of telephone numbers that it may not contact; and

(4) Accessing the national do-not-call database. The member uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

#### **(d) Procedures**

Prior to engaging in telemarketing, a member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Members must have a written policy for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a member receives a request from a person not to receive calls from that member, the member must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Members must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the member on whose behalf the outbound telephone call is made, the member on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(4) Identification of sellers and telemarketers. A member or person associated with a member making an outbound telephone call must provide the called party with the name of the individual caller, the name of the member, an address or telephone number at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A member making outbound telephone calls must maintain a record of a person's request not to receive further calls.

#### **(e) Wireless Communications**

The provisions set forth in this Rule are applicable to members and persons associated with a member making outbound telephone calls to wireless telephone numbers.

#### **(f) Outsourcing Telemarketing**

If a member uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the member remains responsible for ensuring compliance with all provisions contained in this Rule.

#### **(g) Caller Identification Information**

(1) Any member that engages in telemarketing, as defined in paragraph (m)(20) of this Rule, must transmit or cause to be transmitted the telephone number, and, when made available by the member's telephone carrier, the name of the member, to any caller identification service in use by a recipient of an outbound telephone call.

(2) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(3) Any member that engages in telemarketing, as defined in paragraph (m)(20) of this Rule, is prohibited from blocking the transmission of caller identification information.

#### **(h) Unencrypted Consumer Account Numbers**

No member or person associated with a member shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer's billing information to process a payment pursuant to a telemarketing transaction.

#### **(i) Submission of Billing Information**

For any telemarketing transaction, a member or person associated with a member must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(1) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the member or person associated with a member must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (i)(1)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(2) In any other telemarketing transaction involving preacquired account information not described in paragraph (i)(1), the member or person associated with a member must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (i)(2)(A).

#### **(j) Abandoned Calls**

(1) No member or person associated with a member shall "abandon" any outbound telephone call. An outbound telephone call is "abandoned" if a person answers it and the call is not connected to a person associated with a member within two seconds of the person's completed greeting.

(2) A member or person associated with a member shall not be liable for violating paragraph (j)(1) if:

(A) the member or person associated with a member employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(B) the member or person associated with a member, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(C) whenever a person associated with a member is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, the member or person associated with a member promptly plays a recorded message that states the name and telephone number of the member or person associated with the member on whose behalf the call was placed; and

(D) the member retains records establishing compliance with paragraph (j)(2).

#### **(k) Prerecorded Messages**

(1) No member or person associated with a member shall initiate any outbound telephone call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (j)(2)(C) unless:

(A) the member has obtained from the recipient of the call an express agreement, in writing, that:

(i) the member obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the member to place prerecorded calls to such person;

(ii) the member obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;

(iii) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific member; and

(iv) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the member or person associated with a member allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (d)(4), followed immediately by a disclosure of one or both of the following:

(i) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the member's procedures instituted under paragraph (d)(3) at any time during the message. The mechanism must:

a. automatically add the number called to the member's firm-specific do-not-call list;

b. once invoked, immediately disconnect the call; and

c. be available for use at any time during the message;

(ii) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the member's procedures instituted under paragraph (d)(3). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

a. automatically adds the number called to the member's firm-specific do-not-call list;

b. immediately thereafter disconnects the call; and

c. is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the member complies with all other requirements of this Rule and other applicable federal and state laws.

(2) Any call that complies with all applicable requirements of paragraph (k) shall not be deemed to violate paragraph (j).

### **(l) Credit Card Laundering**

Except as expressly permitted by the applicable credit card system, no member or person associated with a member shall:

(1) present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the member;

(2) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or,

(3) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

### **(m) Definitions**

For purposes of this Rule:

(1) The term "account activity" shall include, but not be limited to, purchases, sales, interest 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.

(2) The term "acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(3) The term "billing information" means any data that enables any person to access a customer's or donor's account, for example a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number.

(4) The term "broker-dealer of record" refers to the broker-dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

(5) The term "caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.

(6) The term "cardholder" means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(7) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) The term "credit card" means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(9) The term "credit card sales draft" means any record or evidence of a credit card transaction.

(10) The term "credit card system" means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(11) The term "customer" means any person who is or may be required to pay for goods or services offered through telemarketing.

(12) The term "established business relationship" means a relationship between a member and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the member or at a clearing firm that provides clearing services to such member within the previous 18 months immediately preceding the date of the telemarketing call;

(B) the member is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or

(C) the person has contacted the member to inquire about a product or service offered by the member within the previous three months immediately preceding the date of the telemarketing call.

A person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member's affiliate does not extend to the member unless the person would reasonably expect the member to be included.

(13) The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(14) The term "merchant" means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. A "charitable contribution" means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(15) The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(16) The term "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A "donor" means any person solicited to make a charitable contribution.

(17) The term "person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(18) The term "personal relationship" means any family member, friend, or acquaintance of the person associated with a member making an outbound telephone call.

(19) The term "preacquired account information" means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(20) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call.

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••• **Supplementary Material:** -----

**.01 Compliance with Other Requirements.** This Rule does not affect the obligation of any member or person associated with a member that engages in telemarketing to comply with relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101-6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

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Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.  
Amended by SR-FINRA-2012-027 eff. July 9, 2012.  
Amended by SR-FINRA-2011-059 eff. June 29, 2012.  
Amended by SR-NASD-2004-174 eff. March 1, 2005.  
Amended by SR-NASD-2003-131 eff. March 31, 2004.  
Amended by SR-NASD-2000-12 eff. Nov. 3, 2003.  
Adopted by SR-NASD-96-28 eff. Dec. 2, 1996.

**Selected Notice:** 04-15, 05-07, 12-17.

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[◀ 3220. INFLUENCING OR REWARDING EMPLOYEES OF OTHERS](#)

UP

[3240. BORROWING FROM OR LENDING TO CUSTOMERS ▶](#)

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## VERSIONS

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Feb 04, 2013 onwards

## 3240. Borrowing From or Lending to Customers

The Rule

Notices

### (a) Permissible Lending Arrangements; Conditions

No person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless:

(1) the member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member;

(2) the borrowing or lending arrangement meets one of the following conditions:

(A) the customer is a member of such person's immediate family;

(B) the customer (i) is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business and (ii) is acting in the course of such business;

(C) the customer and the registered person are both registered persons of the same member;

(D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the registered person not maintained a relationship outside of the broker-customer relationship; or

(E) the lending arrangement is based on a business relationship outside of the broker-customer relationship; and

(3) the requirements of paragraph (b) of this Rule are satisfied.

### (b) Notification and Approval

(1) The registered person shall notify the member of the borrowing or lending arrangements described in paragraphs (a)(2)(C), (D), and (E) above prior to entering into such arrangements and the member shall pre-approve in writing such arrangements. The registered person shall also notify the member and the member shall pre-approve in writing any modifications to such arrangements, including any extension of the duration of such arrangements.

(2) With respect to the borrowing or lending arrangements described in paragraph (a)(2)(A) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such borrowing or lending arrangements.

(3) With respect to the borrowing or lending arrangements described in paragraph (a)(2)(B) above, a member's written procedures may indicate that registered persons are not required to notify the member or receive member approval either prior to or subsequent to entering into such borrowing or lending arrangements, provided that, the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness. For purposes of this subparagraph, the member may rely on the registered person's representation that the terms of the loan meet the above-described standards.

### (c) Definition of Immediate Family

The term "immediate family" means parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other person whom the registered person supports, directly or indirectly, to a material extent.

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

**.01 Record Retention.** For purposes of paragraph (b)(1) of this Rule, members shall preserve the written pre-approval for at least three years after the date that the borrowing or lending arrangement has terminated or for at least three years after the registered person's association with the member has terminated.

Amended by SR-FINRA-2009-095 eff. June 14, 2010.

Amended by SR-NASD-2004-05 eff. Feb. 18, 2004.

Adopted by SR-NASD-2003-92 eff. Nov. 10, 2003.

**Selected Notice:** 10-21.

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[← 3230. TELEMARKETING](#)

UP

[3241. REGISTERED PERSON BEING NAMED A CUSTOMER'S BENEFICIARY OR HOLDING  
A POSITION OF TRUST FOR A CUSTOMER](#) ▶

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## 3241. Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer

### (a) Obligations of the Registered Person

(1) A registered person shall decline being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate upon learning of such status unless one of the following conditions is satisfied:

(A) The customer is a member of the registered person's immediate family; or

(B) Upon learning of such status, the registered person provides written notice describing the proposed status to the member with which the registered person is associated, in such form as specified by the member, and receives written approval from that member of such status prior to being named a beneficiary of a customer's estate or receiving a bequest from a customer's estate. If the member disapproves the status or places conditions or limitations on it, the registered person shall not assume such status or shall comply with such conditions or limitations.

(2) A registered person shall decline being named as an executor or trustee or holding a power of attorney or similar position for or on behalf of a customer upon learning of such status unless one of the following conditions is satisfied:

(A) The customer is a member of the registered person's immediate family; or

(B) Upon learning of such status, the registered person provides written notice describing the position and the person's proposed role to the member with which the registered person is associated, in such form as specified by the member, and receives written approval from that member of such status prior to acting in such capacity or receiving any fees, assets or other benefit in relation to acting in such capacity; and

(i) The registered person does not derive financial gain from acting in such capacity other than from fees or other charges that are reasonable and customary for acting in such capacity; and

(ii) If the member disapproves the position or places conditions or limitations on it, the registered person shall not act in such capacity or shall comply with such conditions or limitations.

### (b) Obligations of a Member Receiving Notice

(1) Upon receipt of a written notice as described in Rule 3241(a), a member shall:

(A) Perform a reasonable assessment of the risks created by the registered person's assuming such status or acting in such capacity, including, but not limited to, an evaluation of whether it will interfere with or otherwise compromise the registered person's responsibilities to the customer; and

(B) Make a reasonable determination of whether to approve the registered person's assuming such status or acting in such capacity, to approve it subject to specific conditions or limitations, or to disapprove it.

(2) Upon completion of the member's assessment, a member shall advise the registered person in writing whether the member:

(A) Approves the person's assuming such status or acting in such capacity and imposes any conditions or limitations on the person's holding the position; or

(B) Disapproves the person's assuming such status or acting in such capacity.

(3) If the member imposes conditions or limitations on its approval of the person's assuming such status or acting in such capacity, the member shall reasonably supervise the registered person's compliance with such conditions or limitations.

(4) A member shall establish and maintain written procedures to comply with the requirements of paragraph (b) of this Rule.

### (c) Definition of Immediate Family

The term "immediate family" means parents, grandparents, mother-in-law or father-in-law, spouse or domestic partner, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and any other

person who resides in the same household as the registered person and the registered person financially supports, directly or indirectly, to a material extent. The term includes step and adoptive relationships.

••• **Supplementary Material:** -----

**.01 Customer.** For purposes of this Rule, a “customer” would include any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member.

**.02 Estate.** For purposes of this Rule, a customer’s estate would include any cash and securities, real estate, insurance, trusts, annuities, business interests and other assets that the customer owns or has an interest in at the time of death.

**.03 Record Retention.** For purposes of paragraph (b) of this Rule, members shall preserve the written notice and approval for at least three years after the date that the beneficiary status or position of trust has terminated or the bequest received or for at least three years, whichever is earlier, after the registered person’s association with the member has terminated.

**.04 Position Prior to Association With Member.** If a registered person was named as a beneficiary or to a position of trust prior to the registered person’s association with the member, the registered person, within 30 calendar days of becoming so associated, shall provide notice to and receive approval from the member consistent with this Rule to maintain the beneficiary status or position of trust.

**.05 Pre-Existing Positions.** With respect to agreements to assume such status or act in such capacity that were entered into prior to the existence of a broker-customer relationship, such as where the customer was not a customer of the registered person at the time at which the registered person was named beneficiary or to a position of trust, these agreements raise similar conflict of interest concerns as agreements to assume such status or act in such capacity entered into subsequent to the existence of a broker-customer relationship. Therefore, the registered person must act consistent with paragraph (a) of this Rule for any existing beneficiary status or position of trust prior to the initiation of the broker-customer relationship. Moreover, upon receipt of notice of such a position, the member should evaluate the beneficiary status or position of trust consistent with paragraph (b) of this Rule.

**.06 Naming Other Persons.** A registered person instructing or asking a customer to name another person to be a beneficiary of the customer’s estate or to receive a bequest from the customer’s estate would present similar conflict of interest concerns as the registered person being so named. Accordingly, a registered person instructing or asking a customer to name another person, such as the registered person’s spouse or child, to be a beneficiary of the customer’s estate or to receive a bequest from the customer’s estate would not be consistent with paragraph (a)(1) of the Rule.

Adopted by SR-FINRA-2020-020 eff. Feb. 15, 2021.

**Selected Notices:** [20-38](#).

> FINRA RULES > 3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS  
> 3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

## 3250. Designation of Accounts

The Rule

Notices

No member shall carry an account on its books in the name of a person other than that of the customer, except that an account may be designated by a number or symbol, provided the member has on file a written statement signed by the customer attesting the ownership of such account.

Amended by SR-FINRA-2009-017 eff. Aug. 17, 2009.

Amended by SR-NYSE-92-04 eff. May 27, 1992.

Amended eff. March 26, 1970.

**Selected Notice:** 09-33.

◀ 3241. REGISTERED PERSON BEING NAMED A CUSTOMER'S BENEFICIARY OR  
HOLDING A POSITION OF TRUST FOR A CUSTOMER

UP

3260. DISCRETIONARY ACCOUNTS ▶



## 3260. Discretionary Accounts

### (a) Excessive Transactions

No member shall effect with or for any customer's account in respect to which such member or his agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

### (b) Authorization and Acceptance of Account

No member or registered representative shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the member, as evidenced in writing by the member or the partner, officer or manager, duly designated by the member, in accordance with Rule 3110.

### (c) Approval and Review of Transactions

The member or the person duly designated shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.

### (d) Exceptions

This Rule shall not apply to:

(1) 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 amount of 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 a 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;

(2) bulk exchanges at net asset value of money market mutual funds ("funds") utilizing negative response letters provided:

(A) The bulk exchange is limited to situations involving mergers and acquisitions of funds, changes of clearing members and exchanges of funds used in sweep accounts;

(B) The negative response letter contains a tabular comparison of the nature and amount of the fees charged by each fund;

(C) The negative response letter contains a comparative description of the investment objectives of each fund and a prospectus of the fund to be purchased; and

(D) The negative response feature will not be activated until at least 30 days after the date on which the letter was mailed.

Amended by SR-FINRA-2019-009 eff. May 8, 2019.

Amended by SR-NASD-2002-162 and SR-NASD-2004-116 eff. Jan. 31, 2005.

Amended by SR-NASD-92-14 eff. Dec. 10, 1992.

**Selected Notices:** 75-33, 76-30, 91-39, 91-80, 92-25, 93-1, 04-71.



## 3270. Outside Business Activities of Registered Persons

The Rule

Notices

No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member. Passive investments and activities subject to the requirements of Rule 3280 shall be exempted from this requirement.

### ••• Supplementary Material: -----

**.01 Obligations of Member Receiving Notice.** Upon receipt of a written notice under Rule 3270, a member shall consider whether the proposed activity will: (1) interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers or (2) be viewed by customers or the public as part of the member's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Based on the member's review of such factors, the member must evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity. A member also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of Rule 3280. A member must keep a record of its compliance with these obligations with respect to each written notice received and must preserve this record for the period of time and accessibility specified in SEA Rule 17a-4(e)(1).

Amended by SR-FINRA-2015-030 eff. Sept. 21, 2015.

Amended by SR-FINRA-2009-042 eff. Dec. 15, 2010.

Adopted by SR-NASD-88-34 eff. Oct. 13, 1988.

**Selected Notices:** 88-5, 88-45, 88-86, 89-39, 90-37, 94-44, 94-93, 96-33, 01-79, 10-49.

### VERSIONS

Sep 21, 2015 onwards



## 3280. Private Securities Transactions of an Associated Person

### (a) Applicability

No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule.

### (b) Written Notice

Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction; provided however that, in the case of a series of related transactions in which no selling compensation has been or will be received, an associated person may provide a single written notice.

### (c) Transactions for Compensation

(1) In the case of a transaction in which an associated person has received or may receive selling compensation, a member which has received notice pursuant to paragraph (b) shall advise the associated person in writing stating whether the member:

(A) approves the person's participation in the proposed transaction; or

(B) disapproves the person's participation in the proposed transaction.

(2) If the member approves a person's participation in a transaction pursuant to paragraph (c)(1), the transaction shall be recorded on the books and records of the member and the member shall supervise the person's participation in the transaction as if the transaction were executed on behalf of the member.

(3) If the member disapproves a person's participation pursuant to paragraph (c)(1), the person shall not participate in the transaction in any manner, directly or indirectly.

### (d) Transactions Not for Compensation

In the case of a transaction or a series of related transactions in which an associated person has not and will not receive any selling compensation, a member which has received notice pursuant to paragraph (b) shall provide the associated person prompt written acknowledgment of said notice and may, at its discretion, require the person to adhere to specified conditions in connection with his participation in the transaction.

### (e) Definitions

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

(1) "Private securities transaction" shall mean any securities transaction outside the regular course or scope of an associated person's employment with a member, including, though not limited to, new offerings of securities which are not registered with the Commission, provided however that transactions subject to the notification requirements of Rule 3210, transactions among immediate family members (as defined in FINRA Rule 5130), for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities, shall be excluded.

(2) "Selling compensation" shall mean any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions; finder's fees; securities or rights to acquire securities; rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise; or expense reimbursements.

Amended by SR-FINRA-2017-004 eff. April 3, 2017.  
Amended by SR-FINRA-2015-030 eff. Sept. 21, 2015.  
Amended by SR-NASD-99-60 eff. March 23, 2004.  
Adopted by SR-NASD-85-28 eff. Nov. 12, 1985.

**Selected Notices:** 75-34, 80-62, 82-39, 85-21, 85-54, 85-84, 91-32, 94-44, 96-33, 01-79, 03-79.

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[← 3270. OUTSIDE BUSINESS ACTIVITIES OF REGISTERED PERSONS](#)

[UP](#)

[3300. ANTI-MONEY LAUNDERING →](#)

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## VERSIONS

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Apr 03, 2017 onwards