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 in this provision. Notwithstanding the provisions of paragraph (l)(1), the following non-cash compensation arrangements are permitted:

(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 the second 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.

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

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 to Members: 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.

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

VERSIONS

Sep 05, 2017 - Jun 29, 2020

2342. "Breakpoint" Sales

The Rule | Notices

(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

The Rule | Notices

(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

The Rule | Notices

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 Rule | Notices

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

The Rule | Notices

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 Rule | Notices

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 Rule | Notices

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 Rule | Notices

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 Rule | Notices

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

The Rule | Notices

(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

The Rule | Notices

(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