3130. Annual Certification of Compliance and Supervisory Processes

The Rule | Notices

(a) Designation of Chief Compliance Officer(s)

Each member shall designate and specifically identify to FINRA on Schedule A of Form BD one or more principals to serve as a chief compliance officer.

(b) Annual Certification Requirement

Each member shall have its chief executive officer(s) (or equivalent officer(s)) certify annually,[1] as set forth in paragraph (c), that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes.

(c) Certification

The certification shall state the following:

The undersigned is/are the chief executive officer(s) (or equivalent officer(s)) of (name of member corporation/partnership/sole proprietorship) (the "Member"). As required by FINRA Rule 3130(b), the undersigned make(s) the following certification:

1. The Member has in place processes to:

(A) establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations;

(B) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and

(C) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with FINRA rules, MSRB rules and federal securities laws and regulations.

2. The undersigned chief executive officer(s) (or equivalent officer(s)) has/have conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months, the subject of which satisfy the obligations set forth in FINRA Rule 3130.

3. The Member's processes, with respect to paragraph 1 above, are evidenced in a report reviewed by the chief executive officer(s) (or equivalent officer(s)), chief compliance officer(s), and such other officers as the Member may deem necessary to make this certification. The final report has been submitted to the Member's board of directors and audit committee or will be submitted to the Member's board of directors and audit committee (or equivalent bodies) at the earlier of their next scheduled meetings or within 45 days of the date of execution of this certification.

4. The undersigned chief executive officer(s) (or equivalent officer(s)) has/have consulted with the chief compliance officer(s) and other officers as applicable (referenced in paragraph 3 above) and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in order to attest to the statements made in this certification.

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[1] Members must ensure that each ensuing annual certification is effected no later than on the anniversary date of the previous year's certification.

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

.01 Designation of Co-Chief Executive Officers. A member may choose to designate a second co-chief executive officer, provided that each of the two chief executive officers must individually discharge all of the obligations set forth in Rule 3130, and each shall be held responsible for the representations in the certification as if they were the member's only chief executive officer. Designation of a co-chief executive officer pursuant to this Rule applies only for the purposes of this Rule and has no effect on any other regulatory obligation imposed on a member or its chief executive officer.

.02 Designation of Multiple Chief Compliance Officers. FINRA recognizes that compliance expertise may reside in more than one individual in firms with distinct business segments. Therefore, a member may choose to designate more than one chief compliance officer, provided that (1) each designated chief compliance officer is a principal; (2) the member precisely defines and documents the areas of primary compliance responsibility assigned to each designated chief compliance officer and makes specific provisions for which of the designated chief compliance officers has primary compliance responsibility in areas that can reasonably be expected to overlap; (3) each designated chief compliance officer satisfies all of the requirements of Rule 3130 with respect to his or her defined area of primary compliance responsibility as if that individual was the member's only chief compliance officer and (4) collectively, the designated chief compliance officers have the responsibilities and expertise that enable them to consult with the chief executive officer(s) on the totality of the subject matters required to be addressed in the certification by the chief executive officer(s) under Rule 3130. Thus, for example, a member that chooses to have multiple chief compliance officers is required to conduct one or more meetings annually between the chief executive officer(s) (or equivalent officer(s)) and each designated chief compliance officer, individually or collectively. At each such meeting, the chief executive officer (or equivalent officer) would be required to discuss with each chief compliance officer the required topics, but only as it relates to the particular chief compliance officer's defined and documented area of primary compliance responsibility.

.03 Importance of Compliance Processes. It is critical that each FINRA member understand the importance of employing comprehensive and effective compliance policies and written supervisory procedures. Compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations is the foundation of ensuring investor protection and market integrity and is essential to the efficacy of self-regulation. Consequently, the certification requirement is intended to require processes by each member to establish, maintain, review, test and modify its compliance policies and written supervisory procedures in light of the nature of its businesses and the laws and rules that are applicable thereto, and to evidence such processes in a report reviewed by the chief executive officer(s) (or equivalent officer(s)) executing the certification.

.04 Content of Meetings Between Chief Executive Officer and Chief Compliance Officer. Included in this processes requirement is an obligation on the part of the member to conduct one or more meetings annually between the chief executive officer(s) (or equivalent officer(s)) and the chief compliance officer(s) to: (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the member's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

.05 Role of the Chief Compliance Officer. The periodic and content requirements for meetings between the chief executive officer(s) (or equivalent officer(s)) and the chief compliance officer(s), as well as the pertinent requirements of paragraphs 3 and 4 of the certification, are intended to indicate the unique and integral role of a chief compliance officer both in the discharge of certain compliance processes and reporting requirements that are the subject matter of the certification and in providing a reliable basis upon which the chief executive officer(s) can execute the certification. A chief compliance officer is a primary advisor to the member on its overall compliance scheme and the particularized rules, policies and procedures that the member adopts. This is because a chief compliance officer should have an expertise in the process of (1) gaining an understanding of the products, services or line functions that need to be the subject of written compliance policies and written supervisory procedures; (2) identifying the relevant rules, regulations, laws and standards of conduct pertaining to such products, services or line functions based on experience and/or consultation with those persons who have a technical expertise in such areas of the member's business; (3) developing, or advising other business persons charged with the obligation to develop, policies and procedures that are reasonably designed to achieve compliance with those relevant rules, regulations, laws and standards of conduct; (4) evidencing the supervision by the line managers who are responsible for the execution of compliance policies; and (5) developing programs to test compliance with the member's policies and procedures.

It is the expertise in the process of compliance that makes a chief compliance officer an indispensable party to enable the chief executive officer(s) to reach the conclusions stated in the certification. Consequently, any certification made by a chief executive officer (or equivalent officer) under circumstances where a chief compliance officer has concluded, after consultation, that there is an inadequate basis for making such certification would be, without limitation, conduct inconsistent with the observance of the high standards of commercial honor and the just and equitable principles of trade — a violation of Rule 2010. Beyond the certification requirement, it is the intention of this Rule to foster regular and significant interaction between senior management and the chief compliance officer(s) regarding the member's comprehensive compliance program.

.06 Responsibility for Compliance Functions. The chief compliance officer(s) and other compliance officers that report to the chief compliance officer(s) (as described in the sentence that immediately follows) shall perform the compliance functions contemplated by this Rule, including paragraphs 3 and 4 of the certification. Nothing in this Rule is intended to limit or discourage the participation of other employees both within and without the member's compliance department in any aspect of the member's compliance programs or processes, including those matters discussed in this Rule. However, it is understood that a chief compliance officer and, where applicable, the most senior compliance officers having primary compliance department responsibility for each of the member's business segments, will retain responsibility for the compliance functions contemplated by this Rule, including paragraphs 3 and 4 of the certification.

As may be necessary to render their views and advice, the chief compliance officer(s) and the other officers referenced in paragraph 3 of the certification who consult with the chief executive officer(s) (or equivalent officer(s)) pursuant to paragraph 4, shall, in turn, consult with other employees, officers, outside consultants, lawyers and accountants.

.07 Effect of Certification on Business Line Responsibility. The FINRA Board of Governors recognizes that supervisors with business line responsibility are accountable for the discharge of a member's compliance policies and written supervisory procedures. The signatory to the certification is certifying only as to having processes in place to establish, maintain, review, test and modify the member's written compliance and supervisory policies and procedures and the execution of this certification and any consultation rendered in connection with such certification does not by itself establish business line responsibility.

.08 Ability of Chief Compliance Officer to Hold Other Positions. The requirement to designate one or more chief compliance officers does not preclude such persons from holding any other position within the member, including the position of chief executive officer, provided that such persons can discharge the duties of a chief compliance officer in light of his or her other additional responsibilities.

.09 Members Without a Board of Directors or Audit Committee. The requirement that a member's processes include providing the report to the board of directors and audit committee (required by paragraph 3 of the certification) does not apply to members that do not utilize these types of governing bodies and committees in the conduct of their business.[2]

.10 Content of Report Documenting Processes. The report required in paragraph 3 of the certification must document the member's processes for establishing, maintaining, reviewing, testing and modifying compliance policies, that are reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations, and any principal designated by the member may prepare the report. The report must be produced prior to execution of the certification and be reviewed by the chief executive officer(s) (or equivalent officer(s)), chief compliance officer(s) and any other officers the member deems necessary to make the certification and must be provided to the member's board of directors and audit committee in final form either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of execution of the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors who have responsibility for such administration. The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization provided that (1) such report is clearly titled in a manner indicating that it is responsive to the requirements of the certification and this Rule; (2) a member that submits a report for review in response to a FINRA request must submit the report in its entirety; and (3) the member makes such report in a timely manner, i.e., annually.

[2] As a part of their process, members must have the report reviewed by their governing bodies and committees that serve similar functions in lieu of a board of directors and audit committee.

Amended by SR-FINRA-2008-057 eff. Dec. 15, 2008.
Amended by SR-FINRA-2008-030 eff. Dec. 15, 2008.
Amended by SR-NASD-2007-049 eff. July 16, 2007.
Amended by SR-NASD-2005-121 eff. Oct. 14, 2005.
Adopted by SR-NASD-2003-176 eff. Dec. 1, 2004.

Selected Notices: 04-79, 07-32, 08-57.

‹ 3120. SUPERVISORY CONTROL SYSTEM UP 3150. HOLDING OF CUSTOMER MAIL ›

3150. Holding of Customer Mail

The Rule | Notices

(a) A member may hold mail for a customer who will not be receiving mail at his or her usual address, provided that:

(1) the member receives written instructions from the customer that include the time period during which the member is requested to hold the customer's mail. If the requested time period included in the instructions is longer than three consecutive months (including any aggregation of time periods from prior requests), the customer's instructions must include an acceptable reason for the request (e.g., safety or security concerns). Convenience is not an acceptable reason for holding mail longer than three months;

(2) the member:

(A) informs the customer in writing of any alternate methods, such as email or access through the member's website, that the customer may use to receive or monitor account activity and information; and

(B) obtains the customer's confirmation of the receipt of such information; and

(3) the member verifies at reasonable intervals that the customer's instructions still apply.

(b) During the time that a member is holding mail for a customer, the member must be able to communicate with the customer in a timely manner to provide important account information (e.g., privacy notices, the SIPC information disclosures required by Rule 2266), as necessary.

(c) A member holding a customer's mail pursuant to this Rule must take actions reasonably designed to ensure that the customer's mail is not tampered with, held without the customer's consent, or used by an associated person of the member in any manner that would violate FINRA rules or the federal securities laws.

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

Selected Notice: 14-10.

‹ 3130. ANNUAL CERTIFICATION OF COMPLIANCE AND SUPERVISORY PROCESSES UP 3160. NETWORKING ARRANGEMENTS BETWEEN MEMBERS AND FINANCIAL INSTITUTIONS ›

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.

‹ 3150. HOLDING OF CUSTOMER MAIL UP 3170. TAPE RECORDING OF REGISTERED PERSONS BY CERTAIN FIRMS ›

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.

‹ 3160. NETWORKING ARRANGEMENTS BETWEEN MEMBERS AND FINANCIAL INSTITUTIONS UP 3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS ›

VERSIONS

May 08, 2019 onwards

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

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.

‹ 3210. ACCOUNTS AT OTHER BROKER-DEALERS AND FINANCIAL INSTITUTIONS UP 3230. TELEMARKETING ›

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: