



September 3, 2015

By Electronic Mail (rule-comments@sec.gov)

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: SR-FINRA-2015-029: Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook

Dear Mr. Errett:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) proposal to adopt a new, consolidated rule addressing accounts opened or established by associated persons of members at financial institutions other than the firm with which they are associated (the “Proposal”). FINRA proposes to adopt new FINRA Rule 3210 and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.²

I. BACKGROUND

SIFMA applauds FINRA’s continued efforts to finalize the Consolidated FINRA Rulebook. SIFMA appreciates the staff’s work to move the Proposal and other initiatives forward as part of the rule consolidation process. SIFMA stands ready to

¹SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See generally Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook, Securities Exchange Act Release No. 75655 (Aug. 10, 2015), 80 FR 48941 (Aug. 14, 2015) (SR-FINRA-2015-029) (available at: http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2015-029.pdf) [last visited Aug. 12, 2015].

assist FINRA in advancing the remaining rules that still need to be moved into the Consolidated FINRA Rulebook.

FINRA originally solicited comment on the Proposal in Regulatory Notice 09-22 (“RN 09-22”).³ SIFMA appreciates FINRA’s considering and responding to SIFMA’s comments on RN 09-22. SIFMA believes that the Proposal has benefited from the comments on RN 09-22 that FINRA has incorporated into the Proposal. SIFMA supports the Proposal, but thinks the Proposal can benefit from the additional changes discussed in this comment letter.

II. OVERVIEW OF THE PROPOSAL

A. The Proposal Works with New FINRA Rule 3110(d)

FINRA Rule 3110(d) sets forth supervisory requirements for members to comply with the Insider Trading and Securities Fraud Enforcement Act of 1988.⁴ FINRA Rule 3110(d)(1) requires that a member’s supervisory procedures must include a process for the review of securities transactions that is reasonably designed to identify trades that may violate the provisions of the Securities Exchange Act of 1934 or FINRA rules prohibiting insider trading and manipulative and deceptive devices.

In the Proposal, FINRA states that Proposed FINRA Rule 3210 should work in tandem with Rule 3110(d).⁵

B. Core Requirement of the Proposal

Proposed FINRA Rule 3210(a) provides that no person associated with a member (“employer member”) shall, without the prior written consent of the member, open 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.

³See generally RN 09-22 (April 2009) (available at: <http://www.finra.org/sites/default/files/NoticeDocument/p118524.pdf>) [last visited Aug. 12, 2015].

⁴ Pub. L. 100-704, 102 Stat. 4677.

⁵ See 80 FR at 48947.

C. Beneficial Interest

Proposed FINRA Rule 3210.02 provides that an associated person shall be deemed to have a beneficial interest in any account that is held by:

- The spouse of the associated person;
- 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;
- Any other related individual over whose account the associated person has control; or
- Any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.

The types of accounts listed in Proposed FINRA Rule 3210.02 are designed to align with "covered accounts" as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).⁶

D. Accounts Where an Associated Person Has Discretionary Authority

The Proposal eliminates the language in the current rules that references accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions" (NYSE Rule 407(b)) and accounts where the associated person has "discretionary authority" (NASD Rule 3050(b)).

FINRA notes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable.⁷

⁶ See 80 FR at 48944.

⁷ See *id.* at 48945.

E. Associated Person Notification Obligations

The proposed new rule places notification obligations on associated persons with respect to the executing member or other financial institution. Proposed FINRA Rule 3210(b) is based on NASD Rules 3050(c) and 3050(d) and provides that any associated person, prior to opening or otherwise establishing an account subject to the rule, must notify in writing the executing member, or other financial institution, of their association with the employer member.

F. Executing Broker Obligations

Proposed FINRA Rule 3210(c) is based on NASD Rule 3050(b)(2) and provides that an executing member must, upon written request by the employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.

G. Information Transmitted from Executing Members to Employer Members: Exclusions

Proposed Rule 3210.03 is based on NYSE Rule 407.12 and NASD Rule 3050(f) and provides that the requirement that the executing member provide the employer member with duplicate account confirmations and statements does not apply to:

- Transactions in:
 - Unit investment trusts;
 - Municipal fund securities as defined under MSRB Rule D-12;
 - 529 Plans;
 - Variable contracts;
 - Mutual funds; or
- Accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.

H. Accounts at Non-Member Financial Institutions

Proposed FINRA Rule 3210.04 is new and provides that, with respect to an account subject to the rule at a financial institution other than a member, the employer member must 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.

I. Accounts Established Before Association with a Broker-Dealer

The Proposal addresses accounts opened by an associated person prior to her association with the employer member.⁸ Proposed FINRA Rule 3210.01 provides that, if an 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, must obtain the written consent of the employer member to maintain the account and must notify in writing the executing member or other financial institution of their association with the employer member.

J. Deleted Requirements

Proposed FINRA Rule 3210 deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407, including:

- NASD Rule 3050(a)'s requirement that the executing member use reasonable diligence to determine that the execution of the transaction will not "adversely affect the interests of the employer member."
- The account review requirements set forth in NYSE Rule 407(b) and the requirements for written procedures set forth in NYSE Rule 407.11.
- NYSE Rule 407A, NYSE Rule Interpretation 407/01, and NYSE Rule Interpretation 407/02.
- Language referring to accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions" (NYSE Rule 407(b)) and accounts where the associated person has "discretionary authority" (NASD Rule 3050(b)).

⁸ See 80 FR at 48947.

III. SIFMA's COMMENTS ON THE PROPOSAL

A. Scope of the Rule – Exempted Transactions & Accounts

Proposed Rule 3210.03 is based on NYSE Rule 407.12 and NASD Rule 3050(f) and provides that the requirement that the executing member provide the employer member with duplicate account confirmations and statements does not apply to transactions in unit investment trusts, municipal fund securities, 529 Plans, variable contracts, or mutual fund shares. The proposed rule's duplicate account confirmations and statements also do not apply to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts. Nonetheless, for these exempted transactions and accounts, an associated person must still obtain the employer member's prior written consent under Proposed Rule 3210(a).

SIFMA believes that the proposal properly excludes these types of accounts and transactions from the proposed rule's duplicate account statement and confirmation requirement. SIFMA, however, continues⁹ to believe that these types of accounts and transactions should be exempted from the scope of the rule altogether since employees have no ability to engage in insider trading or other manipulative practices through these accounts or types of products. Firms will incur significant operational and supervisory costs associated with this new requirement without any appreciable investor protection benefits.

SIFMA also believes that not excluding these types of transactions and accounts from the entire rule will have a negative impact on firms' ability to design, implement, and maintain a reasonably designed, risk-based Compliance system because firms will be required to direct limited Compliance resources to processing notice requests for accounts and transactions that represent little, if any, risk of insider trading or other violative conduct.

B. Spousal Accounts

Proposed FINRA Rule 3210(a) applies to any account in which securities transactions can be effected and in which the associated person has a *beneficial interest*. Proposed FINRA Rule 3210.02 provides that an associated person shall be deemed to have a beneficial interest in any account that is held *by the spouse of the associated person*.

⁹ SIFMA previously raised this concern in its comments on RN 09-22. See generally Letter from Amal Aly, Managing Director and Associate General Counsel, SIFMA, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA (Jun. 8, 2009) (available at <http://www.finra.org/sites/default/files/NoticeComment/p118947.pdf>) [last visited Aug. 30, 2015].

SIFMA believes that including all spousal accounts, without exception, within the Proposal is overly broad and costly. Modern families have different dynamics and structures that implicate the underlying rationale of the Proposal. For example, married couples live separately, are going through a separation or divorce, or maintain independent finances. It is not uncommon for spouses to maintain completely separate financial lives.

SIFMA recommends that FINRA treat spousal accounts similarly to the other accounts listed in proposed FINRA Rule 3210.02. The accounts listed in proposed FINRA Rule 3210.02(b)-(d) all include qualifiers that limit the reach of the rule:

- 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*;
- Any other related individual *over whose account the associated person has control*; or
- Any other individual over whose account the associated person *has control and to whose financial support the associated person materially contributes*. (Emphasis added.)

SIFMA suggests that FINRA change the language in proposed FINRA Rule 3210.02(a) to:

- “the spouse of the associated person, *provided that the spouse resides in the same household as the associated person and that the associated person has control over such account*.”

C. Proposed FINRA Rule 3210.04: Accounts Held at Financial Institutions Other Than a Member Firm

With respect to an account at a financial institution that is not a FINRA member firm, Proposed FINRA Rule 3210.04 requires the employer member to “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 . . . such account.”

The FINRA response to comments on RN 09-22 states that Proposed FINRA Rule 3210.04 responds to commenters' requests for greater flexibility in managing outside accounts held at non-member financial institutions.¹⁰ SIFMA appreciates FINRA responding to commenters on this issue. The text included in Proposed FINRA Rule 3210.04, however, is focused on one element of the analysis (*i.e.*, duplicate statements) while leaving out other considerations that a member firm might want to take into account as to whether it prefers to allow any of its staff to hold outside accounts.

SIFMA believes that the Proposal will be streamlined and made easier to implement from a supervisory and operational standpoint if FINRA uses "principles-based" language in Proposed FINRA Rule 3210.04. The amended language should provide that if a firm decides to permit accounts of its associated persons to be opened and maintained at an outside institution, the firm must, at a minimum, determine that the account activity can be properly monitored pursuant to the requirements of Rule 3110(d).

D. Access to Account Information

Proposed FINRA Rule 3210(c) requires that "[a]n 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." (Emphasis added.)

SIFMA would like FINRA to include in the Supplementary Material that an employer member may satisfy the requirements of Proposed FINRA Rule 3210 by receiving transactional data through automated means, such as electronic data feeds, in lieu of receiving hardcopy or imaged confirmations and statements. In addition, SIFMA requests clarification that the scope and frequency of "transactional data contained therein" received by an employer member may vary by firm and may be limited to securities transactions required to be reviewed under FINRA Rule 3110(d).

E. 30-Day Window

Proposed FINRA Rule 3210.01 provides that, if an account was opened or otherwise established prior to a person's association with the employer member, the associated person, within 30 calendar days of becoming so associated, must obtain the written consent of the employer member to maintain the account and must notify in writing the executing member or other financial institution of her association with the employer member.

¹⁰See 80 FR at 48944-48 and accompanying notes. See also *id.* at 48942, n. 7.

SIFMA appreciates FINRA extending the originally proposed 15-day window¹¹ to 30 days. SIFMA, however, believes that the “notification of the prior outside account” and “employing firm’s consent” should not both be required within the 30-day window. Requiring the employing firm to provide its consent to the account within 30 days might raise operational, supervisory, and related challenges. SIFMA believes it would be prudent from a supervisory perspective to require notice and “seeking of consent” within the 30-day window.

SIFMA recommends that proposed FINRA Rule 3210.01 be reworded as follows:

“... within 30 calendar days of becoming so associated, shall notify in writing the executing member or other financial institution of his or her association with the employer member and seek written consent of the employer member to maintain the account.”

F. Consistency with MSRB Rule G-28

SIFMA encourages FINRA to work with the Municipal Securities Rulemaking Board (the “MSRB”) to align the requirements of Proposed FINRA Rule 3210 and MSRB Rule G-28.¹² Both Proposed FINRA Rule 3210 and MSRB Rule G-28 contain requirements governing employee transactions. Investors would benefit, and inefficiencies would be reduced, if FINRA worked with the MSRB in developing a uniform standard for the industry.

¹¹ See RN 09-22 at 4 and 9.

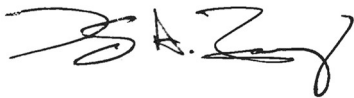
¹² MSRB Rule G-28 requires: (a) *Account Instructions*. No broker, dealer or municipal securities dealer shall open or maintain an account in which transactions in municipal securities may be effected for a customer who such broker, dealer or municipal securities dealer knows is employed by, or the partner of, another broker, dealer or municipal securities dealer, or for or on behalf of the spouse or minor child of such person unless such broker, dealer, or municipal securities dealer first gives written notice with respect to the opening and maintenance of such account to the broker, dealer or municipal securities dealer by whom such person is employed or of whom such person is a partner. (b) *Account Transactions*. No broker, dealer, or municipal securities dealer shall effect a transaction in municipal securities with or for an account subject to section (a) of this rule unless such broker, dealer, or municipal securities dealer (i) sends simultaneously to the employing broker, dealer or municipal securities dealer a duplicate copy of each confirmation sent to the customer, and (ii) acts in accordance with any written instructions which may be provided to the broker, dealer or municipal securities dealer by an employing broker, dealer or municipal securities dealer with respect to transactions effected with or for such account. (c) *Exemption for Municipal Fund Securities*. The provisions of this rule shall not be applicable to transactions in municipal fund securities or to accounts that are limited to transactions in municipal fund securities. See MSRB Rule G-28 (available at <http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-28.aspx>) [last visited on Aug. 21, 2015].

IV. CONCLUSION

SIFMA appreciates the opportunity to comment on the Proposal. Subject to the comments included in this letter, SIFMA supports the Proposal. SIFMA commends FINRA for its continued efforts to create a consolidated rulebook.

If you have any questions or require further information, please contact Kevin Zambrowicz, Managing Director & Associate General Counsel, SIFMA at (202) 962-7386 (kzambrowicz@sifma.org), or Stephen Vogt, Assistant Vice President & Assistant General Counsel, SIFMA at (202) 962-7393 (svogt@sifma.org).

Very truly yours,



Kevin Zambrowicz
Associate General Counsel &
Managing Director



Stephen Vogt
Assistant Vice President &
Assistant General Counsel

Cc: Evan Charkes, Co-Chair, SIFMA Compliance & Regulatory Policy Committee
Pamela Root, Co-Chair, SIFMA Compliance & Regulatory Policy Committee