

FINRA Requests Comment on a Revised Proposal to Adopt a Consolidated FINRA Rule Regarding Discretionary Accounts and Transactions

On June 17, 2015, FINRA issued a request for comment on a revised proposal to adopt a new FINRA Rule 3260 for Discretionary Accounts and Transactions by Persons other Than the Customer. The accompanying Regulatory Notice 15-22 proposes to revise and consolidate NASD Rule 2510 and Incorporated NYSE Rule 408 as part of FINRA's ongoing effort toward a consolidated FINRA handbook integrating the two regimes. Proposed FINRA Rule 3260 was initially issued for comment on November 12, 2009 in Regulatory Notice 09-63, and has now been revised in response to eight comments on the initial proposal, one of which was submitted by Seward & Kissel, and amendments to Exchange Act Rule 15c3-3 that impact the operation of some parts of the rule. The current revised proposal of FINRA Rule 3260 addresses and imposes requirements for various aspects of discretionary accounts, activities, and transactions in order to protect investors from the misuse of discretionary power by firms and associated persons. First, proposed FINRA rule 3260(a) outlines obligations of member firms and associated persons that have discretionary power of customers' accounts, and prohibits any discretionary transactions not in accordance with the customer's signed, dated, prior written authorization or that are "excessive in size or frequency in view of the financial resources and character of such account." In addition, it requires prompt approval of any discretionary transactions and review of discretionary accounts at frequent intervals by someone other

than the discretionary actor. Proposed FINRA rule 3260(c)(1) sets forth several exceptions to the requirements of proposed FINRA rule 3260(a) based on existing NASD, NYSE and SEC standards, including exceptions for: (A) Temporary Time or Price Discretion; (B) Mergers and Acquisitions of MMFs; (C) Bulk Transfer of Customer Accounts and Change of Broker-Dealer of Record; (D) Treatment of Free Credit Balances Outside of a Sweep Program; (E) Treatment of Free Credit Balances In a Sweep Program; and (F) MMF Redemption Programs and Transactions to Satisfy Indebtedness. Proposed FINRA rule 3260(b) generally covers transactions by agents on behalf of customers, and allows firms to accept an agent's order for a customer's account only in accordance with, and within the scope of, the customer's prior written authorization, and only after also obtaining the agent's prior, dated, "wet" (or manual) signature. The deadline to submit comments on the revised proposal is August 17, 2015.

[Click here](#) for full notice.

[Click here](#) for initial proposal notice.

[Click here](#) to see SewKis comment on initial proposal.