

# **FINRA Rule on Payments to Unregistered Persons to become effective August 24, 2015**

FINRA Rule 2040 consolidates NYSE and NASD rules and NASD guidance on the payment of fees to unregistered persons. The new rule will become effective on August 24, 2015.

In an effort to align FINRA rules in this area with the Exchange Act, Rule 2040(a) bars payments to unregistered broker-dealers who are required to be registered under Section 15(a) of the Exchange Act. Rule 2040(a)(2) further prohibits payments to any appropriately registered person, unless such payment complies with all applicable federal securities laws, FINRA rules and Exchange Act rules and regulations.

## **Retiring Representatives**

Replacing NASD IM-2420-2, FINRA Rule 2040(b) allows a member firm to pay continuing commissions to its retiring registered representatives after they cease to be associated with the firm. The payments must be derived from accounts held for continuing customers of the retiring registered representative, regardless of whether customer funds or securities are added to the accounts post-retirement. However, 2040(b)(A) limits these payments to good faith, bona fide contracts between the member firm and the retiring registered representative whereby the retiring registered representative maintains he or she will not solicit new business or service accounts generating the continuing commissions, and 2040(b)(B) requires that the contractual arrangement complies with applicable federal securities laws, Exchange Act rules and regulations.

## **Nonregistered Foreign Finders**

Replacing NASD Rule 1060(b) and NYSE Interpretation 345(a)(i)/03, new FINRA Rule 2040(c) provides that a member firm and associated persons may make ongoing transaction-related payments to non-registered foreign finders, solely in connection with the referrals of non-U.S. customers. The member firm must also comply with the conditions set forth in the Rule. Payments for activities beyond the initial referral or finder's fee for non-U.S. customers would not be permissible under the Rule 2040(c) foreign finders exemption.

To see Regulatory Notice 15-07, please [click here](#).