
SEC Approves New Financial Responsibility Requirements for FINRA Member Firms

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Effective February 8, 2010, FINRA members will need to comply with new rules relating to capital requirements and financial reporting and notification (collectively, the "FINRA Financial Responsibility Rules").¹ While these rules are based largely on existing NASD and incorporated NYSE rules, there are a number of new requirements that firms should consider. In particular, additional provisions regarding capital requirements and financial reporting and notifications will apply to member firms that clear or carry customer accounts or operate pursuant to an exemption under SEC Rule 15c3-3(k)(2)(i) and either (1) clear customer transactions pursuant to this exemption, or (2) hold customer funds in a designated bank account.² These firms shall be referred to, collectively, as "Carrying/Clearing Members."

The FINRA Financial Responsibility Rules consist of new FINRA Rules [4110](#), [4120](#), [4130](#), [4140](#) and [4521](#).³ In addition, FINRA Financial Responsibility Rules [9557](#) and [9559](#) establish an expedited appeal process for member firms that are served with a notice to increase capital or net worth. The attached PDF highlights the more significant provisions of the FINRA Financial Responsibility Rules relating to: (1) capital requirements; (2) regulatory notifications and business curtailments; and (3) financial notifications, reports, and audits.⁴ Tables in the PDF also identify the corresponding NASD and/or incorporated NYSE rule being replaced (if any) and whether the FINRA Financial Responsibility Rules impose new or additional requirements. (Please click [here](#) to view the PDF.)

FINRA members should consider what, if any, impact these new requirements will have on their procedures for monitoring and computing net capital, monitoring business expansions, and providing regulatory notifications. For more information about these new requirements and their effect, please contact the authors of this Alert or any other member of WilmerHale's Broker-Dealer practice.

¹ The rules were approved by the Securities and Exchange Commission on November 4, 2009. Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009), *available here*. See also, FINRA Regulatory Notice 09-71 (Dec. 2009) *available here*.

² Rule 15c3-3(k)(2)(i) provides an exemption from the SEC's so-called "customer protection rule" for

firms that: carry no margin accounts; promptly transmit all customer funds and deliver all securities received in connection with their broker-dealer activities; do not otherwise hold funds or securities for, or owe money or securities to, customers; and effectuate all financial transactions with customers through one or more bank accounts designated as "Special Account for the Exclusive Benefit of Customers" of (name of the broker-dealer).

³ The complete text of the new rules is available on the [FINRA website](#).

⁴ In addition to these requirements, FINRA Rule 4130, which is substantially identical to NASD Rule 3131, imposes restrictions on the activities of government securities broker-dealers experiencing financial and/or operational difficulties.

Authors



Bruce H. Newman

PARTNER

✉ bruce.newman@wilmerhale.com

☎ +1 212 230 8835



Stephanie Nicolas

PARTNER

✉ stephanie.nicolas@wilmerhale.com

☎ +1 202 663 6825