



Update on FINRA Financial Rules

Annual Audited Financial Report Submission

The Financial Industry Regulatory Authority (FINRA) announced in Regulatory Notice 11-46 that commencing November 8, 2011, member firms having a fiscal year end on or after September 30, 2011 are required to file their annual audited financial reports electronically through the firm's FINRA Gateway. The filings must include the signed and notarized oath and affirmation required pursuant to Securities and Exchange Act Rule 17a-5(e)(2). FINRA relied on NASD Rule 3170 as the basis for the change in process.

To the extent that you need to file an amendment to an annual financial audit report that was filed through the Gateway, you will have to contact your regulatory coordinator to open a "re-file" window. Additionally, amended audits that were filed in a hard copy will have to be forwarded again, in hard copy format. In either instance, the amended audit must be filed in its entirety, and not just the amended pages.

As a reminder, the electronic filing through the FINRA Gateway only addresses FINRA requirements. Firms will still need to file a hard copy of their annual audited financial report with the SEC in Washington, the firm's Regional SEC Office, and any states that still require the filing of a hard copy of the annual audited financial report.

Action Items for Annual Audited Financial Statements

Firms need to consider the following items as you approach year end:

- Firms having a December 31 year-end should obtain an audit engagement letter from your accountant.
- Make sure your accountant is aware of the new requirement to file electronically with FINRA.
- Confirm that the annual audit is filed electronically with FINRA, and filed in hard copy format with the SEC within 60 days from year end. Additionally, you will need to file with the various state regulators in accordance with state rules and regulations.
- Those firms considering a change of independent auditor for this year should file a Designation of Accountant electronically with FINRA, and obtain an audit engagement letter. Additionally the notification should be filed with the SEC main office and the regional office.

General Ledger Supervision

Pursuant to FINRA Rule 4523 ("Rule 4523"), every firm must now designate an associated person and a supervisor to be responsible for each general ledger account. The associated person should be responsible for each general ledger account and any account of like function used by a firm, and must control and oversee entries into each such account and determine that the account

is current and accurate as necessary to comply with all applicable FINRA rules and federal securities laws. The supervisor on the other hand, will be responsible for reviewing each account to determine that each account is current and accurate, and that any items that become aged or uncertain as to resolution are promptly identified for research and possible transfer to a suspense account as required, but at a minimum no less than on a monthly basis. Proper documentation for items that are transferred to a suspense account will have to be maintained supporting the rationale for the transfer and the ultimate resolution of said items.

Only carrying or clearing firms are required to maintain the designations in writing, but we strongly recommend that all firms maintain the written designations so each individual understands his or her responsibilities. Any firm operating pursuant to SEC Rule 15c3-3(k)(2)(i) that clears customer transactions or holds customer funds in a reserve account is subject to the same requirements as a clearing or carrying firm.

With respect to smaller firms, those firms with only one associated person may assign the primary and supervisory responsibility to the same individual, as long as he or she is properly licensed. Firms with more than one associated person, who believe they are limited by their size and resources, and would like for one associated person operate in both capacities, must obtain written approval from FINRA prior to having one associated person operate in both capacities.

FINRA believes that Rule 4523 is not intended to insert another level of supervision of firm's books and records as the FINOP is still ultimately responsible for the preparation and maintenance of financial records. To that end, FINRA has stated that the FINOP can be the responsible principal for purposes of Rule 4523.

Action Items related to General Ledger Supervision

Firms should consider the following action items in order to comply with the new general ledger supervision requirements:

- You should review your internal process to determine who is ultimately responsible for the determination as to whether each general journal account is current and accurate, and designate the person responsible for determining that each general ledger account is current.
- To the extent the person responsible is a third party service provider, you should have such person fingerprinted so as to assure that they are an associated person of the firm.
- You should review the process related to the supervision of the general journal accounts to determine that each account is current and accurate. Also assure that any items that become aged or uncertain as to resolution are promptly identified for research and possible transfer to a suspense account, and designate the person to be responsible for such.
- To the extent your firm is limited by size and resources and intends to have one person perform both functions, you should seek prompt written approval from FINRA.

We hope that this information has been helpful to you. Should you have any additional questions or concerns, please feel free to contact Daniel E. LeGaye or Michael Schaps by e-mail or phone, at 281-367-2454, or consult with your legal counsel or third party consultant.

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