

## Financial Responsibility

### SEC Approves Consolidated FINRA Rules Governing Financial Responsibility

Effective Date: February 8, 2010

#### Executive Summary

The SEC approved FINRA's proposed rule change<sup>1</sup> to adopt a new set of financial responsibility rules for the consolidated rulebook (the Consolidated FINRA Rulebook).<sup>2</sup> FINRA Rules 4110, 4120, 4130, 4140 and 4521 are new consolidated rules governing financial responsibility that are based in part on, and replace, provisions in the NASD and Incorporated NYSE Rules.<sup>3</sup> The rule change also amends FINRA Rules 9557 and 9559 to, among other things, provide members served with a notice under the financial responsibility rules an expedited appeal process, and makes certain conforming revisions to Section 4(g) of Schedule A to the FINRA By-Laws.<sup>4</sup>

The text of the new rules is set forth in Attachment A on our Web site at [www.finra.org/notices/09-71](http://www.finra.org/notices/09-71). The chart in Attachment B summarizes the applicability of the new rules to members.

Questions concerning this *Notice* should be directed to:

- Kris Dailey, Vice President, Risk Oversight & Operational Regulation (ROOR), at (646) 315-8434;
- Susan DeMando Scott, Associate Vice President, Financial Operations Department, at (202) 728-8411; or
- Adam H. Arkel, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

#### Background

FINRA's financial responsibility rules play an important role in supporting the SEC's minimum net capital and other financial responsibility

December 2009

#### Notice Type

- Consolidated FINRA Rulebook
- New Rules

#### Suggested Routing

- Compliance
- Legal
- Senior Management

#### Key Topics

- Capital Compliance
- Financial Responsibility

#### Referenced Rules & Notices

- FINRA Rule 4110
- FINRA Rule 4120
- FINRA Rule 4130
- FINRA Rule 4140
- FINRA Rule 4521
- FINRA Rule 9557
- FINRA Rule 9559
- SEA Rule 15c3-1
- SEA Rule 15c3-3
- Section 4(g) of Schedule A to FINRA By-Laws

requirements. Generally, the rules establish criteria promoting the permanency of members' capital, require the review and approval of certain material financial transactions, and establish criteria intended to identify members approaching financial difficulty and to monitor their financial and operational condition.

The new rules incorporate many provisions in the existing NASD and NYSE Rules<sup>5</sup> that govern financial responsibility, but streamline and reorganize those provisions. In addition, FINRA has tiered many provisions so that they apply only to those members that clear or carry customer accounts.<sup>6</sup>

## Discussion

### A. FINRA Rule 4110 (Capital Compliance)

#### 1. Authority to Increase Capital Requirements

FINRA Rule 4110(a), based primarily on NYSE Rule 325(d), enables FINRA to prescribe greater net capital requirements for carrying and clearing members, or require any such member to restore or increase its net capital or net worth, when deemed necessary for the protection of investors or in the public interest. The authority to act under the rule resides with FINRA's Executive Vice President charged with oversight for financial responsibility (or his or her written officer delegate) (referred to as FINRA's EVP). To execute such authority, FINRA is required under the rule to issue a notice pursuant to FINRA Rule 9557 (a Rule 9557 notice). (As amended by the rule change, FINRA Rule 9557 provides, among other things, opportunity for an expedited hearing pursuant to FINRA Rule 9559; see Section F of this *Notice* for more detail.)

Rule 4110(a) is a new provision for FINRA members that are not Dual Members (non-NYSE members) that are carrying or clearing members. However, it does not apply to introducing firms or to certain firms with limited business models (together, referred to as non-clearing firms). (For example, introducing firms and firms that engage exclusively in subscription-basis mutual fund transactions, direct participation programs, or mergers and acquisition activities are not subject to the provision.) In this regard, certain Dual Members that are subject to current NYSE Rule 325(d)—namely those NYSE member firms that are not carrying or clearing members (NYSE non-clearing firms)—will not be subject to the similar requirement in the FINRA Rule. Pursuant to the rule change, all members that are subject to the requirement will have an opportunity to request an expedited hearing if they receive a Rule 9557 notice, which is a new procedural right not available under current NYSE Rule 325(d).

As FINRA has explained,<sup>7</sup> NYSE staff historically employed NYSE Rule 325(d) in limited circumstances, and FINRA anticipates that it will apply FINRA Rule 4110(a) in similar

fashion. The new rule enables FINRA to respond promptly to extraordinary, unanticipated or emergency circumstances. Under FINRA Rule 4110(a), FINRA's EVP may require a carrying or clearing member to comply with increased capital requirements in circumstances such as where unanticipated systemic market events threaten the member's capital, or where the member maintains an undue concentration in illiquid products. In such instances, FINRA's EVP may, for example, find it appropriate, in the public interest, to raise the applicable "haircut" (that is, to increase the percentage of the market value of certain securities or commodities positions by which the member must reduce its net worth) or treat certain assets as non allowable in computing net capital.

## **2. Suspension of Business Operations**

FINRA Rule 4110(b)(1) is based in part on current NASD Rule 3130(e) and provides that, unless otherwise permitted by FINRA, a member must suspend all business operations during any period of time in which it is not in compliance with SEA Rule 15c3-1. This requirement is consistent with current law.<sup>8</sup>

As with NASD Rule 3130(e), FINRA Rule 4110(b)(1) is self-operative (that is, a member is automatically required to comply with the provision without any direction from FINRA). Notwithstanding that the proposed provision is self-operative, FINRA may issue a Rule 9557 notice directing a member that is not in compliance with SEA Rule 15c3-1 to suspend all or a portion of its business. Upon receipt of a Rule 9557 notice, the member would have the right to request an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with FINRA Rule 4110(b)(1).

## **3. Withdrawal of Equity Capital**

To further the goal of financial stability, FINRA Rule 4110(c)(1) prohibits a member from withdrawing equity capital for a period of one year, unless otherwise permitted by FINRA in writing. The rule expressly provides that, subject to the requirements of FINRA Rule 4110(c)(2), members are not precluded from withdrawing profits earned.

FINRA anticipates that approvals for the early withdrawal of equity capital pursuant to Rule 4110(c)(1) would be granted on a limited basis.

FINRA Rule 4110(c)(2) applies only to carrying or clearing members and prohibits any such member, without the prior written approval of FINRA, from withdrawing capital, paying a dividend or effecting a similar distribution that would reduce the member's equity, or making any unsecured advance or loan to a stockholder, partner, sole proprietor, employee or affiliate, where such withdrawals, payments, reductions, advances or loans in the aggregate, in any rolling 35-calendar-day period, on a net basis,

would exceed 10 percent of the member's excess net capital.<sup>9</sup> This provision is based in part on current NYSE Rule 312(h) and SEA Rule 15c3-1(e). While this is a new requirement for non-NYSE members that are carrying or clearing members, it does not apply to non-clearing firms. In this regard, NYSE non-clearing firms that currently are subject to NYSE Rule 312(h) will not be subject to the new rule. FINRA further notes that the 10 percent limit set forth in Rule 4110(c)(2) provides a *de minimis* exception; current NYSE Rule 312(h) does not include such an exception.

#### 4. Sale-and-Leasebacks, Factoring, Financing, Loans and Similar Arrangements

To ensure the permanency of net capital in contemplated sale-and-leaseback, factoring, financing and similar arrangements, FINRA Rule 4110(d)(1)(A) provides that no carrying or clearing member may consummate a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring or financing arrangement with respect to any unsecured accounts receivable, where any such arrangement would increase the member's tentative net capital by 10 percent or more,<sup>10</sup> without the prior written authorization of FINRA.

FINRA Rule 4110(d)(1)(A) is based on NYSE Rule 328(a), but applies only to carrying and clearing members. While the provision is new for non-NYSE members that are carrying or clearing members, it does not apply to non-clearing firms. In this regard, NYSE non-clearing firms that currently are subject to NYSE Rule 328(a) will not be subject to the new rule. Moreover, unlike NYSE Rule 328(a), FINRA Rule 4110(d)(1)(A) includes a *de minimis* exception by permitting a member to consummate, without FINRA's prior authorization, a sale-and-leaseback arrangement with respect to any of its assets, or a sale, factoring or financing arrangement with respect to any unsecured accounts receivable where the arrangement would not increase the member's tentative net capital by 10 percent or more.<sup>11</sup>

Proposed FINRA Rule 4110(d)(1)(B), which is also based on NYSE Rule 328(a), provides that no carrying member may consummate any arrangement concerning the sale or factoring of customer debit balances, irrespective of amount, without the prior written authorization of FINRA. The provision is new for non-NYSE members that are carrying members.

Proposed FINRA Rule 4110(d)(2) is based on NYSE Rule 328(b), but applies only to carrying and clearing members. The provision requires FINRA's prior approval for any loan agreement entered into by such a member, the proceeds of which exceed 10 percent of the member's tentative net capital<sup>12</sup> and that is intended to reduce the deduction in computing net capital for fixed assets and other assets that cannot be readily converted into cash under SEA Rule 15c3-1(c)(2)(iv). Because the provision applies only to carrying and clearing members, NYSE non-clearing firms will be relieved from current requirements under NYSE Rule 328(b). In addition, unlike current NYSE Rule 328(b), FINRA Rule 4110(d)(2) includes a *de minimis* exception.

FINRA Rule 4110(d)(3) provides that any member that is subject to paragraphs (d)(1)(A), (d)(1)(B) or (d)(2) of Rule 4110 is prohibited from consummating, without FINRA's prior written authorization, any arrangement pursuant to those paragraphs if the aggregate of all such arrangements would exceed 20 percent of the member's tentative net capital.<sup>13</sup>

FINRA Rule 4110(d)(4) implements a requirement of the SEC's net capital rule and therefore applies to all members. It provides that any agreement relating to a determination of a "ready market" for securities based upon the securities being accepted as collateral for a loan by a bank under SEA Rule 15c3-1(c)(11)(ii) must be submitted to and be acceptable to FINRA before the securities may be deemed to have a "ready market." When determining the acceptability of a loan agreement, pursuant to FINRA Rule 4110(d)(4), FINRA would, as a general matter, consider such factors as whether the bank would have sole recourse under the agreement and whether the term of the loan is at least one year. FINRA expects that a determination of acceptability can generally be made within approximately one week.

#### **5. Subordinated Loans, Notes Collateralized by Securities and Capital Borrowings**

FINRA Rule 4110(e) is based in part on current NYSE Rule 420 and addresses the requirements for subordinated loans and loans made to general partners of members that are partnerships.

FINRA Rule 4110(e)(1) implements Appendix D of SEA Rule 15c3-1 and requires that all subordinated loans or notes collateralized by securities must meet such standards as FINRA may require to ensure the continued financial stability and operational capability of a member, in addition to meeting those standards specified in Appendix D of SEA Rule 15c3-1.<sup>14</sup> Appendix D of SEA Rule 15c3-1 requires that all subordination agreements must be found acceptable by the Examining Authority before they can become effective.<sup>15</sup>

FINRA Rule 4110(e)(2) requires that, unless otherwise permitted by FINRA, each member whose general partner enters into any secured or unsecured borrowing, the proceeds of which will be contributed to the capital of the member, must, in order for the proceeds to qualify as capital acceptable for inclusion in computation of the member's net capital, submit to FINRA for approval a signed copy of the loan agreement. The loan agreement must have at least a 12-month duration and provide non-recourse to the assets of the member. Moreover, because a general partner's interest may allow the lender to reach into the assets of the broker-dealer, FINRA is requiring a provision in the loan agreement that estops the lender from having that right.

## **B. FINRA Rule 4120 (Regulatory Notification and Business Curtailment)**

### **1. Regulatory Notification**

FINRA Rule 4120(a) is based on current NYSE Rule 325(b), but applies only to carrying and clearing members. The rule requires any such member promptly, but in any event within 24 hours, to notify FINRA when certain specified financial triggers are reached.<sup>16</sup> This is a new notification requirement for non-NYSE members that are carrying or clearing members; it does not, however, apply to non-clearing firms. Accordingly, NYSE non-clearing firms will no longer be subject to these requirements.

### **2. Restrictions on Business Expansion**

FINRA Rule 4120(b) is based on NASD Rule 3130(c) and NYSE Rule 326(a) and addresses circumstances under which a member is prohibited from expanding its business.

FINRA Rule 4120(b)(1), which is self-operative, applies only to carrying and clearing members, and requires any such member, unless otherwise permitted by FINRA, to refrain from expanding its business during any period in which any of the conditions described in FINRA Rule 4120(a)(1) continue to exist for the specified time period. While NASD Rule 3130(c) includes comparable provisions, the requirement under the new rule is self-operative for non-NYSE members that are carrying or clearing members. FINRA Rule 4120(b) also provides that FINRA may issue a Rule 9557 notice directing any such member not to expand its business, in which case the member would have the right to request an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with FINRA Rule 4120(b)(1).

Unlike the self-operative nature of paragraph (b)(1), FINRA Rule 4120(b)(2) authorizes FINRA, for any financial or operational reason, to restrict any member's ability to expand its business by the issuance of a Rule 9557 notice. In all such cases, the member would have the right to request an expedited hearing. This same right currently applies to NASD Rule 3130(c)(2).

### **3. Reduction of Business**

FINRA Rule 4120(c) is based on NASD Rule 3130(d) and NYSE Rule 326(b) and addresses circumstances under which a member would be required to reduce its business.

FINRA Rule 4120(c)(1), which is self-operative, applies only to carrying and clearing members, requiring any such member, unless otherwise permitted by FINRA in writing, to reduce its business to a point enabling its available capital to exceed the standards set forth in FINRA Rule 4120(a)(1) when any of the enumerated conditions continue to

exist for the specified time period. While current NASD Rule 3130(d) includes comparable provisions, the requirement under the new rule is self-operative for non-NYSE members that are carrying or clearing members. FINRA Rule 4120(c)(1) also provides that FINRA may issue a Rule 9557 notice directing any such member to reduce its business, in which case the member would have the right to an expedited hearing. Neither the fact that FINRA may issue a Rule 9557 notice nor the right to an expedited hearing would be a defense in any subsequent disciplinary proceeding with respect to a member's non-compliance with FINRA Rule 4120(c)(1).

Unlike the self-operative nature of paragraph (c)(1), FINRA Rule 4120(c)(2) authorizes FINRA, for any financial or operational reason, to require any member to reduce its business by the issuance of a notice in accordance with Rule 9557. In all such cases, the member would have the right to request an expedited hearing. This same right currently applies to NASD Rule 3130(d)(2).

### **C. FINRA Rule 4130 (Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties)**

FINRA Rule 4130 is substantially identical to NASD Rule 3131 except that the new rule reflects FINRA as the designated examining authority and makes other conforming revisions. FINRA Rule 4130 applies only to certain firms that are subject to the Treasury Department's liquid capital requirements.

### **D. FINRA Rule 4140 (Audit)**

FINRA Rule 4140 incorporates FINRA's existing authority under NASD Rule 3130 and NASD IM-3130 and NYSE Rule 418 to request an audit or an agreed-upon procedures review under certain circumstances. The new rule imposes a late fee of \$100 for each day that a requested report is not timely filed, up to a maximum of 10 business days.

### **E. FINRA Rule 4521 (Notifications, Questionnaires and Reports)**

Drawing in part on NASD IM-3130 and Rule 3150 and NYSE Rules 325(b)(2), 416<sup>17</sup> and 421(2),<sup>18</sup> FINRA Rule 4521 addresses FINRA's authority to request certain information from members to carry out its surveillance and examination responsibilities. As further described below, many of the provisions apply only to carrying and clearing members.

FINRA Rule 4521(a) provides that each carrying or clearing member must submit to FINRA such financial and operational information regarding the member or any of its correspondents as FINRA deems essential for the protection of investors and the public interest. The provisions are new for certain non-NYSE members that are carrying or clearing members.<sup>19</sup>

FINRA Rule 4521(b) requires every member approved by the SEC pursuant to SEA Rule 15c3-1 to use the alternative method of computing net capital contained in Appendix E to that rule to file such supplemental and alternative reports as may be prescribed by FINRA.

FINRA Rule 4521(c) requires each carrying or clearing member to notify FINRA in writing no more than 48 hours after its tentative net capital, as computed pursuant to SEA Rule 15c3-1, has declined 20 percent or more from the amount reported in its most recent FOCUS Report or, if later, the most recent such notification filed with FINRA. This is a new requirement for non-NYSE members that are carrying or clearing members.

FINRA Rule 4521(d) requires that, unless otherwise permitted by FINRA in writing, members carrying margin accounts for customers must submit, on a settlement date basis: (1) the total of all debit balances in securities margin accounts; and (2) the total of all free credit balances contained in cash or margin accounts. This is a new requirement for non-NYSE members that carry margin accounts.<sup>20</sup>

FINRA Rule 4521(e) provides that a late fee of \$100 may be imposed for each day that any report, notification or information a member is required to file pursuant to Rule 4521 is not timely filed, up to a maximum of 10 business days.

#### **F. FINRA Rules 9557 (Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Experiencing Financial or Operational Difficulties) and 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series)**

FINRA Rules 9557 and 9559 address service of notice to members that are experiencing financial or operational difficulties and the related hearing procedures. The rule change makes a number of conforming revisions to FINRA Rules 9557 and 9559 in light of several of the new financial responsibility rules (FINRA Rules 4110, 4120 and 4130). The rule change also amends Rules 9557 and 9559 to afford members with an expedited appeals process. For example, under the new rule amendments:

- ▶ FINRA Rule 9557(d) provides that the requirements referenced in a Rule 9557 notice served upon a member are immediately effective. A timely request for a hearing would stay the effective date for 10 business days after the service of the notice or until a written order is issued pursuant to FINRA Rule 9559(o)(4)(A) (whichever period is less), unless it is determined that such a stay cannot be permitted with safety to investors, creditors or other member firms;
- ▶ To ensure an expedited process, FINRA Rule 9557(e) requires a member to file with the Office of Hearing Officers any written request for a hearing within two business days after service of the Rule 9557 notice;

- FINRA Rule 9559(f)(1) provides that, after a respondent subject to a Rule 9557 notice files a written request for a hearing with the Office of Hearing Officers, the hearing must be held within five business days of such filing;
- FINRA Rule 9559(o)(4)(A) provides that, within two business days of the date of the close of the hearing, the Office of Hearing Officers must issue the Hearing Panel's written order. The Hearing Panel order would be effective when issued. (The rule change provides that, pursuant to FINRA Rules 9559(o)(4)(B) and 9559(p), the written decision explaining the reasons for the Hearing Panel's determinations must be issued within seven days of the issuance of the written order.)

As amended by the rule change, FINRA Rules 9557 and 9559 set forth a number of other enhancements and clarifications of procedure. For example, FINRA Rule 9557(e)(1) provides that a member served with a Rule 9557 notice may request from FINRA staff a letter of withdrawal of the notice. The member may make this request either in lieu of or in addition to filing with the Office of Hearing Officers the written request for a hearing. The rule change enables FINRA staff, in response to the member's request and upon the member's demonstration to the satisfaction of FINRA staff that any requirements and/or restrictions imposed by a notice should be removed or reduced, either to withdraw the Rule 9557 notice or to reduce its requirements and/or restrictions.<sup>21</sup> The member may submit a request for a letter of withdrawal to FINRA staff at any time after the notice is served. If such request is denied by FINRA staff, the proposed rule change provides that the member shall not be precluded from making a subsequent request or requests.<sup>22</sup>

If a member requests a hearing within two business days after service of a 9557 notice, the member may seek to contest (1) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal issued by FINRA staff pursuant to Rule 9557(g)(2), where applicable) and/or (2) FINRA staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member. The Hearing Panel may then either approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds the member has not complied with all of them, the Hearing Panel would be required to impose an immediate suspension on the respondent that would remain in effect unless FINRA staff issues a letter of withdrawal of all requirements and/or restrictions.

## Endnotes

- 1 See Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Granting Approval to Proposed Rule Change; File No. SR-FINRA-2008-067) (Approval Order).
- 2 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice 3/12/08* (Rulebook Consolidation Process).
- 3 Effective February 8, 2010, NASD Rules 3130 and 3131, NASD IM-3130, Incorporated NYSE Rules 312(h), 313(d), 325, 326, 328, 416.20, 418, 420, 421 and NYSE Rule Interpretations 313(d)/01, 313(d)/02, 325(c)(1), 325(c)(1)/01 and 416/01 will be deleted from the Transitional Rulebook.
- 4 FINRA notes that, in devoting this *Notice* to announcing the effective date of a single set of rules and rule amendments, it is deviating from the protocol by which FINRA generally announces the effective dates of the new FINRA rules that are being adopted as part of the consolidated rulebook. See *Information Notice 10/06/08* (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart). FINRA believes that a single *Notice* devoted to the new financial responsibility rules is warranted in view of the regulatory subject matter and the nature of the changes.
- 5 For convenience, the Incorporated NYSE Rules are referred to as the “NYSE Rules.”
- 6 All requirements set forth in the new rules that apply to members that clear or carry customer accounts also apply to members that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clear customer transactions pursuant to such exemptive provisions or hold customer funds in a bank account established thereunder. See FINRA Rules 4110.02, 4120.03 and 4521.01. For further discussion, see Approval Order, note 8, at 74 FR 58334.
- 7 See, e.g., *Regulatory Notice 08-23* (Proposed Consolidated FINRA Rules Governing Financial Responsibility) (May 2008).
- 8 See Approval Order, note 13, at 74 FR 58335.
- 9 The calculation of 10 percent of excess net capital must be based on the member’s excess net capital position as reported in its most recently filed Form X-17A-5. The member must assure itself that the excess net capital so reported has not materially changed since the time the form was filed.
- 10 The calculation of 10 percent of tentative net capital must be based on the member’s tentative net capital position as reported in its most recently filed Form X-17A-5. The member must assure itself that the tentative net capital so reported has not materially changed since the time the form was filed.
- 11 See note 9 *supra*.
- 12 See note 9 *supra*.
- 13 See note 9 *supra*.

© 2009 FINRA. All rights reserved. FINRA and other trademarks of the Financial Industry Regulatory Authority, Inc. may not be used without permission. *Regulatory Notices* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

- 14 See SEA Rule 15c3-1d. Note that the Supplementary Material requires that, for purposes of FINRA Rule 4110(e)(1), the member must assure itself that any applicable provisions of the Securities Act of 1933 and/or state Blue Sky laws have been satisfied, and may be required to submit evidence thereof to FINRA prior to approval of the subordinated loan agreement. See FINRA Rule 4110.01 (Compliance with Applicable Law).
- 15 FINRA will issue a separate *Regulatory Notice* addressing standards for obtaining approval of subordinated loans.
- 16 The determination of whether the financial triggers were reached must be based on the member's financial position as reported in its most recently filed Form X-17A-5. The member must assure itself that its financial position so reported has not materially changed since the time the form was filed.
- 17 Note that NYSE Rules 416(a), 416(c) and 416.10 will remain in the Transitional Rulebook to be addressed later in the rulebook consolidation process. On July 11, 2008, the SEC approved FINRA's proposal to delete NYSE Rule 416(b). See Exchange Act Release No. 58149 (July 11, 2008), 73 FR 42385 (July 21, 2008) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; File No. SR-FINRA-2008-034).
- 18 Because the rule change deletes NYSE Rule 421(2) and its related provision Rule 421.40, the rule change, in combination with rule change SR-FINRA-2008-033 (which was approved by the SEC on September 4, 2008, and took effect on December 15, 2008), deletes NYSE Rule 421 in its entirety. See Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-033); see also *Regulatory Notice 08-57* (SEC Approves New Consolidated FINRA Rules) (October 2008).
- 19 Note that NASD Rule 3150 (Reporting Requirements for Clearing Firms) currently requires most carrying and clearing members to submit certain data to FINRA. Rule 3150 will be addressed later in the rulebook consolidation process.
- 20 FINRA will issue a separate *Regulatory Notice* containing guidance with respect to filing requirements under FINRA Rule 4521(d).
- 21 See FINRA Rule 9557(g)(2).
- 22 See FINRA Rule 9557(e)(1).

## ATTACHMENT B – Financial Responsibility Rules Summary Chart

Proposed FINRA Rule #	Proposed FINRA Rule Requirement/Topic	Applies to...
<b>4110</b>	<b>Capital Compliance</b>	
4110 (a)	Authority to increase capital requirements	Carrying/clearing members <sup>1</sup>
4110(b)	Suspension of business operations	All members
4110(c)(1)	Withdrawal of equity capital	All members
4110(c)(2)	Withdrawal of equity capital	Carrying/clearing members
4110(d)(1)(A)	Sale-and-leasebacks, factoring, financing, loans and similar arrangements	Carrying/clearing members
4110(d)(1)(B)	Sale-and-leasebacks, factoring, financing, loans and similar arrangements	Carrying members
4110(d)(2)	Sale-and-leasebacks, factoring, financing, loans and similar arrangements	Carrying/clearing members
4110(d)(3)	Sale-and-leasebacks, factoring, financing, loans and similar arrangements	Members subject to 4110(d)(1)(A), 4110(d)(1)(B) or 4110(d)(2)
4110(d)(4)	Sale-and-leasebacks, factoring, financing, loans and similar arrangements	All members
4110(e)(1)	Subordinated loans, notes collateralized by securities and capital borrowing	All members
4110(e)(2)	Subordinated loans, notes collateralized by securities and capital borrowing	All members that are partnerships

<sup>1</sup> As explained in the *Notice*, all requirements set forth in the rule change that apply to a member that clears or carries customer accounts also apply to any member that, operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i), either clears customer transactions pursuant to such exemptive provisions or holds customer funds in a bank account established thereunder.

Proposed FINRA Rule #	Proposed FINRA Rule Requirement/Topic	Applies to...
<b>4120</b>	<b>Regulatory Notification and Business Curtailment</b>	
4120(a)	Regulatory notification	Carrying/clearing members
4120(b)(1)	Restrictions on business expansion	Carrying/clearing members
4120(b)(2)	Restrictions on business expansion	All members
4120(c)(1)	Reduction of business	Carrying/clearing members
4120(c)(2)	Reduction of business	All members
<b>4130</b>	<b>Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties</b>	Certain members subject to the Treasury Department's liquid capital requirements
<b>4140</b>	<b>Audit</b>	All members
<b>4521</b>	<b>Notifications, Questionnaires and Reports</b>	
4521(a), (c)	Notifications, questionnaires and reports	Carrying/clearing members
4521(b)	Notifications, questionnaires and reports	Members subject to the SEC's requirements for broker-dealers that are part of consolidated supervised entities (approved to use Appendix E of SEA Rule 15c3-1 for computing net capital)
4521(d)	Notifications, questionnaires and reports	Members carrying margin accounts for customers
4521(e), (f)	Notifications, questionnaires and reports	Any member subject to 4521(a) through (d)