

Regulatory Notice 23-02

New and Amended Rule Text

New language is underlined; deletions are in brackets.

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FINRA Rules

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1000. MEMBER APPLICATION AND ASSOCIATED PERSON

REGISTRATION

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**IM-1013-1. Membership Waive-In Process for Certain New York Stock Exchange
Member Organizations**

This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange ("NYSE") member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). It applies to firms that, as of July 25, 2007, (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together "NYSE-only member organizations"), provided that such firms were not also NASD members as of July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to the Department of a signed waive-in membership application ("Waive-In Application") with the following information:

(1) through (5) No Change.

(6) Representations that the NYSE applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

The Department shall review the Waive-In Application within three business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and FINRA rules, other than FINRA Rules 1011 through 1016, 1019 through 1021, [2231,] 3260 and 4540, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities"). If an NYSE-only member organization admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to Rule 1017. Upon approval of such business expansion, the firm shall be subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and all FINRA rules.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not

be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.

IM-1013-2. Membership Waive-In Process for Certain NYSE American LLC

Member Organizations

This Interpretive Material sets forth a membership waive-in process for certain NYSE American LLC ("NYSE American") member organizations to become members of FINRA as part of the acquisition by NYSE Euronext of the Amex Membership Corporation. It applies to any NYSE American member organization that (i) holds a valid 86 Trinity Permit as of the date such firm transfers its equities operations to the NYSE American Trading Systems and (ii) is not currently a FINRA member. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE American in registration categories recognized by FINRA upon submission to the Department of a signed waive-in membership application ("Waive-In Application") with the following information:

(1) through (5) No Change.

(6) Representations that the NYSE American applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.

The Department shall review the Waive-In Application within three business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved

for membership. The Membership Agreement shall become effective on the date of such notification letter.

Firms admitted pursuant to this Interpretive Material shall be member organizations of both NYSE and NYSE American and as such are subject to FINRA rules (provided that firms admitted to FINRA membership under IM-1013-1 also are subject to FINRA rules), other than FINRA Rules 1011 through 1016, 1019 through 1021, [2231,] 3260 and 4540, the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and the FINRA Rule 8000 and Rule 9000 Series, provided that their NYSE or NYSE American securities business is limited to floor-based activities in either NYSE-traded or NYSE American-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE American floor business under NYSE Rule 70.40 or NYSE American Equities Rule 70.40 ("permitted floor activities"). If a firm admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm must apply for and receive approval to engage in such business activity pursuant to Rule 1017. Upon approval of such business expansion, the firm shall be subject to the FINRA By-Laws and Schedule to By-Laws, including Schedule A, and all FINRA rules.

Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.

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2000. DUTIES AND CONFLICTS

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2200. COMMUNICATIONS AND DISCLOSURES

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2230. Customer Account Statements and Confirmations

2231. Customer Account Statements

(a) General

Except as otherwise provided by paragraph (b) of this Rule, each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. [(In cases where the customer's account is serviced by both an introducing and [clearing]carrying firm, each general securities member must include in the advisory a reference that such reports be made to both firms.)] Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).

(b) Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts

Quarterly account statements need not be sent to a customer pursuant to paragraph

(a) of this Rule if:

(1) [t]The customer's account is carried solely for the purpose of execution on a DVP/RVP basis;

(2) [a]All transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 11860;

(3) [t]The account does not show security or money positions at the end of the quarter (provided, however that positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions, shall not be deemed security or money positions for the purpose of this paragraph (b));

(4) [t]The customer consents to the suspension of such statements in writing. The member must maintain such consents in a manner consistent with Rule 4512 and SEA Rule 17a-4;

(5) [t]The member undertakes to provide any particular statement or statements to the customer promptly upon request; and

(6) [t]The member undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this Rule shall be seen to qualify or condition the obligations of a member under SEA Rule 15c3-3(j)(1) concerning quarterly notices of free credit balances on statements.

(c) No Change.

(d) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) "[a]Account [a]Activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and[/or] journal entries relating to securities or funds in the possession or control of the member.

(2) [a] "[g]General [s]Securities [m]Member" refers to any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3-1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this [section]Rule.

(3) "[d]Direct [p]Participation [p]Program" or "[d]Direct [p]Participation [p]Program [s]Security" refers to the publicly issued equity securities of a direct participation program as defined in Rule 2310 (including limited liability companies), but does not include securities listed on a national securities exchange or any program registered as a commodity pool with the Commodity Futures Trading Commission.

(4) "[r]Real [e]Estate [i]Investment [t]Trust" or "[r]Real [e]Estate [i]Investment [t]Trust [s]Security" refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities listed on a national securities exchange.

(5) "[a]Annual [r]Report" means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Exchange Act.

(6) [a] "DVP/RVP account" [is]refers to an arrangement whereby payment for securities purchased is made to the selling customer's agent [and/]or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

(e) No Change.

••• Supplementary Material: -----

.01 Compliance with Rule 4311 (Carrying Agreements). Members are reminded of their obligations under Rule 4311, including specifically the rights and obligations of the carrying firm under Rule 4311(c)(2) that generally requires each carrying agreement in which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm the responsibility for the safeguarding of funds and securities for the purposes of SEA Rule 15c3-3 and for preparing and transmitting statements of account to customers.

.02 Transmission of Customer Account Statements to Other Persons or Entities

(a) Except as provided for in paragraph (b) of this Supplementary Material, a member may not send account statements relating to a customer's account(s) to other persons or entities unless:

(1) the customer has provided written instructions to the member to send the statements to such person or entity; and

(2) the member continues to send accounts statements directly to the customer either in paper format or electronically as provided in Supplementary Material. 03 of this Rule.

(b) Where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on behalf of a customer, a member may cease sending account statements to the customer upon written instructions from such court-appointed fiduciary provided that the court-appointed fiduciary furnishes to the member an official copy of the court appointment that establishes authority over the customer's account(s).

(c) Notwithstanding paragraph (a) of this Supplementary Material, a member may provide duplicate customer account statement(s) under Rule 2070, Rule 3210 or other similar applicable federal securities laws, rules and regulations in accordance with the requirements of such rule.

.03 Use of Electronic Media to Satisfy Delivery Obligations. A member may satisfy its delivery obligations under this Rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes.

.04 Compliance with Rule 3150 (Holding of Customer Mail). A member is permitted to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements of Rule 3150.

.05 Information to be Disclosed on Statement. Customer account statements must clearly and prominently disclose on the front of the statement:

(a) The identity of the introducing firm and carrying firm (if different) and their respective contact information for customer service. The identity of the carrying firm and its contact information for customer service may appear on the back of the statement provided such information is in "bold" or "highlighted" letters;

(b) That the carrying firm is a member of SIPC; and

(c) The opening and closing balances for the account.

.06 Assets Externally Held. Where a customer account statement includes assets that the member does not carry on behalf of the customer and that are not included on the member's books and records, such assets must be clearly and distinguishably separated on the statement. The statement must:

(a) Clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer;

(b) Disclose that information (including valuation) for such externally held assets included on the statement is derived from the customer or other external source for which the member is not responsible; and

(c) Identify that such externally held assets may not be covered by SIPC.

.07 Use of Logos, Trademarks, etc. Where the logo, trademark or other similar identification of a person (other than the introducing firm or carrying firm) appears on a customer account statement, the identity of such person(s) and the relationship to the introducing, carrying or other firm included on the statement must be provided and may not be used in a manner that is misleading or causes customer confusion.

.08 Use of Summary Statements. Where a member holds a customer's account and another person(s) who separately offers financial related products or services to the same customer (e.g. mutual fund sales and custodial services, banking products and services, insurance products and services, securities products and services, etc.) seek to jointly provide their respective customer account statements together with a statement

summarizing or combining assets held in different accounts ("summary statement") the member is required to:

(a) In the summary statement:

(1) indicate that the summary statement is provided for the customer's convenience and includes assets that may not be held by the broker-dealer;

(2) indicate that the summary statement does not replace any other statement(s) the customer may receive from other financial institutions that hold the customer's assets;

(3) identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing firm, carrying firm, fund distributor, banking or insurance product provider, etc.);

(4) clearly distinguish between assets held or categories of assets held by each entity included in the summary;

(5) identify the customer's account number at each entity and provide contact information for customer service at each entity; if the customer's account number and the contact information for customer service at each entity are included on their respective account statements, then such information need not be included on the summary statement; and

(6) identify each entity that is a member of SIPC;

(b) Ensure that to the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation is recognizable as having been arithmetically derived from the separately stated totals or their components;

(c) Distinguish the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) by color, pagination or other distinct form of demarcation;

(d) Ensure that there is a written agreement between the carrying firm and each other person jointly providing its respective customer account statements attesting that each such person has developed procedures and controls for reviewing and testing the accuracy of the information included on its respective statements; and

(e) Ensure that the summary statement complies with Rule 2231.

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Temporary Dual FINRA-NYSE Member Rules

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[Rule 409T. Statements of Accounts to Customers]

[(a) Except with the permission of the Exchange, or as otherwise provided by this paragraph, member organizations shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. Quarterly statements need not be sent to a customer pursuant to Rule 409T(a) if:]

[1) the customer's account is carried solely for the purpose of execution on a Delivery versus Payment/Receive versus Payment basis (DVP/RVP);]

[2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Exchange Rule 387;]

[3) the account does not show security or money positions at the end of the quarter;]

[4) the customer consents to the suspension of such statements in writing. Such consents must be maintained by the member organization in a manner consistent with Exchange Rule 440 and SEA Rule 17a-4;]

[5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and]

[6) the member organization undertakes to promptly reinstate the delivery of such statements to the customer upon request.]

[Nothing in this rule shall be seen to qualify or condition the obligations of a member organization under SEA Rule 15c3-2 concerning quarterly notices of free credit balances on statements.]

[For purposes of this rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.]

[(b) No member organization shall address confirmations, statements or other communications to a nonmember customer]

[(1) in care of a person holding power of attorney over the customer's account unless either (A) the customer has instructed the member organization in writing to send such confirmations, statements or other communications in care of such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by him; or]

[(2) at the address of any member, member organization, or in care of a partner, stockholder who is actively engaged in the member corporation's business

or employee of any member organization. The Exchange may upon written request therefore waive these requirements.]

[(c) Rescinded October 6, 1978. (See SEA Rule 10b-10).]

[(d) Rescinded July 1, 1970. (See SEA Rule 10b-16).]

[(e) Each statement of account sent to a customer pursuant to this rule shall bear a legend as follows:]

[(1) A legend that reads: "A financial statement of this organization is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request."]

[(2) A legend that advises customers to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. If a customer's account is subject to a clearing agreement pursuant to Exchange Rule 382, the legend must advise that such notification be sent to both the introducing firm and the clearing firm. The legend must also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer's rights, including its rights under the Securities Investor Protection Act (SIPA).]

[(f) Reserved.]

[(g) Member organizations carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically declared in writing that they do not wish such statements sent to them.]

[••• Supplementary Material: -----]

[.10 Exceptions to Rule 409T(b)]

[The provisions of Rule 409T(b), above, are not considered applicable to the following:]

[(1) General or special partners or holders of voting or non-voting stock other than any freely transferable security of member organizations.]

[(2) Employees of member organizations.]

[(3) Persons who maintain desk space at the office of a member or member organization and who thereby establish such office as their place of business.]

[(4) Corporations of which partners, stockholders or employees are officers or directors, and corporation accounts over which such persons have powers of attorney, provided, in each such case, the partner, stockholder or employee is duly authorized by the corporation to receive communications covering the account.]

[(5) Trust accounts, when a partner, stockholder or employee of a member organization is a trustee and has been duly authorized by all other trustees to receive communications covering the account.]

[(6) Estate accounts, when a partner, stockholder or employee of a member organization is an executor or administrator of the estate and has been duly authorized by all other executors or administrators to receive communications covering the account.]

[(7) Upon the written instructions of a customer and with the written approval of a member or supervisor of a member organization, a member organization may hold mail for a customer who will not be at his usual address for the period of his absence, but (a) not to exceed two months if the organization is advised that such customer will be on vacation or travelling or (b) not be exceed three months if the customer is going abroad.]

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Temporary Dual FINRA-NYSE Member Rule Interpretations

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[Rule 409T. Statements of Accounts to Customers]

[(a)]

[/01 Reserved.]

[/02 Information to be Disclosed]

[Statements of accounts to customers must clearly and prominently disclose on the front of the statement:]

[1. the identity of the introducing and carrying organization and their respective phone numbers for service¹;

[2. that the carrying organization is a member of SIPC;]

[3. the opening and closing balances for the account.]

[/03 Use of Third Party Agents]

[Prior to utilizing a "third party agent" to prepare and/or transmit statements of accounts to customers, a member organization shall represent/undertake in writing to the Exchange that:]

[1. The third party is acting as agent for the member organization;]

[2. the member organization retains responsibility for compliance with Rule 409T(a);]

[3. the member organization has developed procedures/controls for reviewing and testing the accuracy of statements of accounts prepared and/or transmitted by the third party agent;]

[4. the member organization will retain copies of statements of accounts prepared and/or transmitted by the third party agent in accordance with applicable books and records requirements.]

[Allocation of responsibilities for preparation and/or transmissions of statements to any person other than a carrying organization pursuant to an agreement approved by the Exchange in accordance with Exchange Rule 382 (Carrying Agreements) shall be deemed to be utilization of a "third party agent."]

[An introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a "third party agent" and may not itself prepare and/or transmit such statements.]

[/04 Assets Externally Held and Included on Statements Solely as a Service to Customers]

[Where a statement of account includes assets as to which the member organization does not have fiduciary responsibility, does not have access to and which are not included on the member organization's books and records, such assets must be clearly and distinguishably separated on the statement. It must be clearly indicated on the statement that such externally held assets: are included on the statement solely as a courtesy to the customer, information (including valuation) is derived from the customer or other external source for which the member organization is not responsible, and are not covered by SIPC.]

[/05 Use of Logos, Trademarks, etc.]

[Where the logo, trademark or other similar identification of a person (other than the carrying or introducing organization) appears on a customer account statement, the

identity of such person(s) and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be utilized in a manner which is misleading or causes customer confusion.]

[/06 Use of Summary Statements]

[Where a member organization carrying a customer's account and another person(s) who separately offers financial related products/services to the same customer (e.g. mutual fund sales/custodial services, banking products/services, insurance products/services, securities products/services, etc.) seek to jointly formulate and/or distribute their respective customer account statements together with a statement summarizing or combing assets held in different accounts ("summary statement"), the Exchange will require:]

[1. That the summary statement:]

[a. indicate that the "summary statement" is provided for informational purposes and includes assets held at different entities;]

[b. identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing/carrying brokerage firms, fund distributor, banking/insurance product providers, etc.);]

[c. clearly distinguish between assets held by each entity by use of columns, coloring or other distinct form of demarcation;]

[d. identify the customer's account number at each entity²;]

[e. provide a telephone number for customer service at each entity²¹

[f. disclose which entity carries each of the different assets or categories of assets included on the summary;]

[g. identify each entity that is a member of SIPC.³¹

[2. To the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation shall be recognizable as having been arithmetically derived from the separately stated totals or their components.]

[3. That the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) be clearly distinguishable by color, pagination or other distinct form of demarcation.]

[4. That there be a written agreement between the carrying organization and each other person jointly formulating and/or distributing its respective customer account statements attesting that each such person has developed procedures/controls for reviewing and testing the accuracy of the information included on its respective statements.]

[5. That the summary statement shall comply with Rule 409T and all interpretations thereof.]

[(b)]

[/01 Standards For Holding Mail For Foreign Customers — Rule 409T(b)(2) Waivers]

[The Exchange will consider written requests from member organizations for the implementation of policies and procedures for the holding of confirmations, statements and broker-dealer financial statements ("communications") for foreign customers. Requests for waivers under Rule 409T(b) must include the following representations:]

[1. that the member organization will obtain not less frequently than annually and will retain (in accordance with SEA Rule 17a-4(b)) a written statement from the customer who has requested such waiver, that it is not feasible for such customer to make alternative arrangements for the regular receipt of these communications and that by reason of inefficient local mail services or unstable political climates, the customer requests that such material temporarily be held on behalf of such customer at the premises of the member organization; and]

[2. that the member organization has written procedures in place for the holding of mail that include, at a minimum, that:]

[a. frequent supervisory review be conducted of any account for which waivers for transmissions of communications have been obtained, with special attention given to discretionary accounts.]

[b. an annual review of the organization's system shall be conducted by the compliance/internal audit department or by the person(s) assigned or delegated such responsibility pursuant to Exchange Rule 342 (independent of the branch office) — such review should encompass a reasonable sampling of account documentation and account activity,]

[c. a log of such communications will be maintained at the branch or (principal) sales office servicing the account, which will note the date of direct transmittal of such communications to the customer and where sent, and]

[d. the member organization will endeavor to promptly communicate (orally) the substance of the communications directly to the customer and that a written record is kept of all meetings and conversations, etc., with the customer.

Communications will be furnished to the customer at the earliest possible meeting.]

[Each foreign customer for whom mail is held is required to state, in writing, that it is not feasible to make alternative arrangements for the regular receipt of the mail. In this regard, member organizations shall represent to the Exchange that it will take steps to determine that the foreign customer has no other U.S. location reasonably available for receipt of the communications. In making that determination, member organizations may rely on the customer's statement unless the member or member organization is on notice of facts to the contrary.]

[Foreign customer accounts for which mail is held require frequent supervisory review by the member organization, i.e., a higher level of supervision and monitoring than is accorded other accounts. Additionally, the annual review conducted by the compliance/internal audit department (or other person(s) delegated such responsibility) must include a determination as to whether all the foreign customer communications are retained pursuant to written customer instructions.]

[The foreign customer communications held in accordance with a waiver under 409T(b)(2) shall be made available to the customer for review at all times and at no special cost.]

[¹ The SEC has stated that under the SEA Rule 15c3-1(a)(2)(iv), certain carrying firms must issue customer account statements, and the account statements must contain the name and telephone number of a person at the carrying firm who the customer can contact with inquiries regarding the account (See SEA Release No. 34-31511, dated

November 24, 1992). The phone number of the carrying organization may appear on the back of the statement. If it does, it must be in "bold" or "highlighted" letters.]

[² If the client's account number and the customer service telephone number at each entity are included on their respective account statements, such information need not be included on the summary statement.]

[³ See, e.g., SIPC Bylaws (Article II) for possible ways to identify SIPC membership by using SIPC statements or symbols.]