

Regulatory Notice

07-49

PLEASE NOTE: The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated, including the NYSE rules referenced in this *Notice*. The incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a consolidated rulebook, FINRA’s *Regulatory Notices* will address both NASD and the incorporated NYSE Rules.

Regulatory Relief

Guidance for Firms Affected by the California Wildfires

Executive Summary

In light of the tragic situation resulting from the recent California wildfires, FINRA wants to assure those firms with offices in the affected areas that we will work closely with you as you recover. While we recognize your first priority is the well being of your family, employees and customers, we also understand that some firms are concerned with a number of regulatory and compliance issues. In this regard, FINRA is providing guidance on a variety of topics, including emergency office relocations, continuing education requirements for registered personnel, registered personnel engaged in military duty, books and records, the handling of customers’ funds and securities and customer communication.

Questions or comments concerning this *Notice* may be directed to:

- William Jannace, Managing Director, Risk Oversight and Operational Regulation, at (212) 656-2744;
- Patricia Albrecht, Assistant General Counsel, Office of General Counsel, at (202) 728-8026; or
- Daniel M. Sibears, Executive Vice President, Member Regulation Programs, at (202) 728-6911.



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Notice Type

- Guidance

Suggested Routing

- Compliance
- Executive Representative
- Senior Management
- Institutional
- Internal Audit
- Legal
- Operations
- Registration
- Systems

Key Topic(s)

- Books and Records
- Business Continuity
- Continuing Education
- Customer Communication
- Customer Funds and Securities
- Credit Regulation
- Disaster Recovery
- Emergency Office Relocation
- Form U4
- Military Personnel & National Guard
- Margin Extension Process

Referenced Rules & Notices

- NASD IM-1000-2
- NASD Rule 3010
- NASD Rule 3012
- NASD Rule 3110
- NYSE Rule 342 and Rule 342.23
- NYSE Rule 342.10
- NYSE Rule 343
- NYSE Rule 345(a), Interpretation /03
- NYSE Rule 401(b)
- NYSE Rule 440

Discussion

Emergency Office Relocations

To relocate displaced personnel, member firms not impacted by the California wildfires are encouraged to make office space available and to otherwise assist those who have been recently displaced. If a firm relocates displaced personnel to a location not currently registered as a branch office or identified as a regular nonbranch location, firms should use their best efforts to provide written notification to FINRA as soon as possible after establishing a new temporary office or space-sharing arrangement that includes, at minimum:

- the office address,
- the entities involved,
- the names of registered personnel,
- a contact phone number,
- the expected duration,¹ if possible, and
- whether any space-sharing arrangements are with an organization in a securities or related business.

FINRA also will not require Dual Members to obtain prior approval pursuant to Rule 343 (Offices-Sole Tenancy, Hours, Display of Membership Certificates) for a temporary office or space-sharing arrangement (*i.e.*, arrangements with an expected duration of 90 calendar days or less).

All firms making temporary office arrangements, however, should remain mindful of the need for proper supervision of these locations.²

Form U4

The requirement to maintain updated Form U4 information (*e.g.*, office of employment address) for registered employees affected by relocations resulting from this event are temporarily suspended. In addition, it is not necessary to submit branch office applications for any newly opened temporary office locations or space-sharing arrangements established as a result of recent events.

Books and Records Maintained at the Affected Locations

Firms that maintained books and records at the affected locations should make every effort to retrieve or back up such records. If any such records were permanently destroyed, a list of the types of books and records required to be maintained pursuant to NASD Rule 3110 (Books and Records) and Exchange Act Rules 17a-3³ and 17a-4⁴—and, for Dual Members only, NYSE Rule 440 (Books and Records)—must be prepared. The list should include the time periods affected, but need not include records that can be recreated from an electronic database or that can be retrieved otherwise from a service bureau, back-up records storage facility, etc. All such lists must be submitted to the firm's Liaison or Finance Coordinator as soon as possible, but no later than December 31, 2007. Firms unable to meet this time frame must contact their Liaison or Finance Coordinator, as appropriate.

Customer Funds and Securities

As soon as possible, firms should determine the dollar amount of any customer checks or securities held at affected business offices that cannot be located or accounted for. This information should be provided, in writing, to your Liaison or Finance Coordinator. In areas where postal service has been suspended or the firm is concerned about a customers' ability to receive mail, FINRA will not object to interim solutions for dealing with customer dividend, interest and similar cash payments. See the U.S. Postal Service Web site for further information on areas with disrupted or suspended mail service at: www.usps.com/communications/news/serviceupdates.htm#ca.

In instances where a branch office or nonbranch location has been relocated or customer calls are being rerouted to another office, FINRA understands that firms may need to deviate from standard operating procedures to accommodate customers who need to access their funds. Procedures that generally require written letters of authorization to move funds or direct a check to a third-party address may, at the firm's discretion, be waived, but firms should exercise as much due diligence as possible in validating the identity of the customer and providing heightened overall supervision of these accounts. Validating the identity of customers remains each firm's responsibility.

Where changes to normal operations are needed, those should be taken into account by firms in fulfilling their obligations to review their supervisory control policies and procedures. When conducting that review, members should ensure that the policies and procedures relating to the transmittal of customer funds, customer changes of address and increased requests for hand delivery of checks are adequate after considering changes to normal operations. Supervisory control policies and procedures also should be considered that will mitigate risk that may arise due to reduced ability to communicate with customers, inability to rely on mail or other disruptions to the existing controls. Please consult NASD Rule 3012 (Supervisory Control System) for further guidance. Dual Members should also consult NYSE Rule 342.23 (Approval, Supervision and Control) and NYSE Rule 401(b) (Business Conduct).

Firms that clear for introducing firms unable to conduct business are encouraged to accept liquidating orders from customers so that customers' access to funds is not restricted. Additionally, member firms that participate in FINRA's recently developed Small Firm Emergency Partner Program (SFEPP) may wish to invoke those arrangements. If they do, those firms should remember to contact their pre-established partner firm during this significant business disruption to assist customers in accessing their funds and other assets through liquidating transactions, and if previously agreed to by the two firms, effecting certain types of purchases, such as purchasing money market funds. Member firms with general questions regarding the SFEPP can access information on FINRA's Web site at www.finra.org/sfepp.

Continuing Education and Qualification Examinations

FINRA is extending continuing education requirements and qualifications examination windows for candidates who reside in any county in California declared a "major disaster" by the federal government. Registered representatives who have a qualifications examination or continuing education window due to expire any time from the date of this *Notice* to the end of November will have their windows extended to December 31, 2007. As more information becomes available, additional extensions may be provided. Please contact FINRA Field Support Services at (800) 999-6647 if you have any questions or require additional information on test center status in these areas.

Credit Regulation

FINRA will be accepting margin extensions on a case-by-case basis for reason code "Acts of God" for customers located in regions affected by the wildfires. Please contact Financial Operations at (202) 728-8411 prior to transmission. Dual Members should contact the Credit Regulation Department at (212) 656-8572 prior to transmission.

Confirmations and Customer Statements

FINRA will not object to member firms holding confirmations, statements and other communications or notices on behalf of those customers located in the affected areas for a period not to exceed 90 calendar days or until further notice. Firms must exercise appropriate supervisory review of the accounts affected, maintain a log of those accounts for which mail is being held and notify the customer holding those accounts that those communications are being held on their behalf as soon as possible. If additional time is required beyond 90 calendar days, please contact your Liaison or Finance Coordinator.

Customer Communication

Firms are encouraged to promptly place a notice on their Web sites that indicates to affected customers whom they may contact concerning their accounts, access to funds or securities, etc. If feasible, firms should consider the activation of toll-free numbers dedicated to responding to these customers.

Business Continuity and Contingency Plans

Firms affected by the California wildfires should contact their Liaison or Finance Coordinator to discuss those business continuity and contingency plan actions implemented to address any problems that have resulted.

Military Personnel and National Guard

FINRA By-Laws, as well as NASD Interpretive Material 1000-2 (Status of Persons Serving in the Armed Forces of the United States) and NYSE Rule 345(a), Interpretation /03 (Registered Persons Who Volunteer or Are Called to Active Military Duty) (Dual Members only), provide specific relief to FINRA-registered persons engaged in the investment banking and securities business who volunteer or are called into active military duty. Such persons will be placed in a specially designated “inactive” status once FINRA is notified of their military call-up, but will remain registered for FINRA purposes. Such persons will remain eligible to receive transaction-related compensation, including continuing commissions, because they remain registered with a firm while on inactive status.

Also, an employing firm may allow a registered person on inactive status to enter into an arrangement with another person registered with the employing firm to service his or her accounts and to share in commissions generated by those accounts. However, such a person on inactive status may not perform any duties of a registered person. In addition, dues and assessments identified in Article VI of the FINRA By-Laws will be waived for such persons. Member firms should notify FINRA of such events by mailing or faxing to the Registration and Disclosure Department a letter (on firm letterhead) identifying the name and CRD number of the person called into active duty, the name and CRD number of the firm (or firms) with whom the person is associated, the date the firm received notification from the individual and a copy of the official call-up notification. Member firms should mail letters notifying FINRA of military call-ups to FINRA Registration and Disclosure Department, P.O. Box 9495, Gaithersburg, MD 20898-9495 or fax them to (240) 386-4751.

If you have questions about this process, please call the Gateway Call Center at (301) 590-6500. For more information, view FINRA’s Active Military Leave Guidance Web page at www.finra.org/RegulatorySystems/CRD/FilingGuidance/p005228.

Endnotes

- 1 A temporary location established in response to the implementation of a business continuity plan is not considered to be a branch office, as that term is defined in NASD Rule 3010(g)(2)(A)(vii) and NYSE Rule 342.10(G) (Definition of Branch Office) unless the location supervises one or more non-branch locations. *See* NASD Rule 3010(g)(2)(B); NYSE Rule 342.10.
- 2 *See* generally NASD Rule 3010; NYSE Rules 342.
- 3 *See* 17 C.F.R. 240.17a-3.
- 4 *See* 17 C.F.R. 240.17a-4.