

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95018; File No. SR-FINRA-2021-024)

June 1, 2022

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 2231 (Customer Account Statements), as modified by Amendment No. 1

I. Introduction

On September 29, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-FINRA-2021-024 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to amend FINRA Rule 2231 (Customer Account Statements) to add new supplementary materials, incorporate specified provisions from dual FINRA-NYSE temporary rules, and delete those temporary rules.<sup>3</sup> The proposed rule change was published for public comment in the Federal Register on September 30, 2021.<sup>4</sup> On November 9, 2021, FINRA consented to an extension of the time period to January 4, 2022, in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On January 4, 2022, FINRA responded to the comment letters received in response to

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Exchange Act Release No. 93215 (September 30, 2021), 86 FR 55641 (October 6, 2021) (File No. SR-FINRA-2021-024) (“Notice”).

<sup>4</sup> Id.

<sup>5</sup> See letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Office of Chief Counsel, Division of Trading and Markets, Commission, dated November 9, 2021.

the Notice and filed an amendment to modify the proposed rule change (“Amendment No. 1”).<sup>6</sup> On January 4, 2022, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.<sup>8</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change

### A. Background

As discussed in the Notice, Rule 2231 and NYSE Rule 409T govern the obligation of FINRA members and member organizations to deliver customer account statements to customers. Specifically, Rule 2231 and NYSE Rule 409T generally require a general securities member<sup>9</sup> to, at least once each calendar quarter, send account statements to customers containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent, except if carried on a Delivery Versus Payment/Receive Versus Payment basis.<sup>10</sup> Rule 2231 does not currently contain any supplementary materials.

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<sup>6</sup> See letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 4, 2022 (“FINRA Response Letter”); see also Exchange Act Release No. 93897, 87 FR 1201 (January 10, 2022) (“OIP and Amendment No. 1”).

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See OIP and Amendment No. 1.

<sup>9</sup> FINRA Rule 2231(d)(2) defines a “general securities member” as any FINRA member “that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of [Exchange Act] Rule 15c3-1(a)” except members that do not carry customer accounts or hold customer funds or securities.

<sup>10</sup> See Notice, 86 FR at 55649.

FINRA stated that at the time it adopted Rule 2231, along with NYSE Rule 409T and NYSE Rule Interpretation 409T (together, “NYSE Provisions”), into the consolidated FINRA rulebook, it would continue to review the substance of such rules and expected to propose substantive changes to some or all of the rules as part of future rulemakings.<sup>11</sup> As a result of that review, FINRA proposed amending Rule 2231 to incorporate several existing provisions from the NYSE Provisions into the FINRA rulebook and proposed deleting the NYSE Provisions in their entirety.<sup>12</sup>

Specifically, FINRA’s proposed rule change would: (1) amend Rule 2231 to (a) add new Supplementary Materials .01 (Compliance with Rule 4311 (Carrying Agreements)), .02 (Transmission of Customer Account Statements to Other Persons or Entities), .03 (Use of Electronic Media to Satisfy Delivery Obligations), and .04 (Compliance with Rule 3150

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<sup>11</sup> As part of the process of completing a consolidated FINRA rulebook, FINRA adopted, without substantive changes, the remaining legacy NASD rules as FINRA rules in the consolidated FINRA rulebook and the NYSE Rules and NYSE Rule Interpretations in the consolidated FINRA rulebook as a separate Temporary Dual FINRA-NYSE Member Rules Series. These NYSE rules and their corresponding interpretations now bear a “T” modifier after the rule and interpretation number to denote their placement in the Temporary Dual FINRA-NYSE Member Rules Series. The Temporary Dual FINRA-NYSE Member Rules Series apply only to FINRA members that are also members of the NYSE. The FINRA rules apply to all FINRA members, unless such rules have a more limited application by their terms. Among the remaining NASD rules was NASD Rule 2340 (Customer Account Statements), which was adopted, without substantive changes, as FINRA Rule 2231. NYSE Rule 409 (Statements of Accounts to Customers) and Incorporated NYSE Rule Interpretation 409 (Statements of Accounts to Customers) were adopted, without substantive changes, under the Temporary Dual FINRA-NYSE Rules Series as Rule 409T and Interpretation 409T, respectively. See Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-009). For convenience, the rules and interpretations under the Temporary Dual FINRA-NYSE Member Rules Series are referred to as “NYSE Rule” and “NYSE Rule Interpretation,” as appropriate. See Notice, 86 FR at note 3.

<sup>12</sup> See Notice, 86 FR at 55646.

(Holding of Customer Mail)) and (b) incorporate provisions derived from NYSE Rule Interpretation 409T, without substantive changes, as Supplementary Materials .05 (Information to be Disclosed on Statement), .06 (Assets Externally Held), .07 (Use of Logos, Trademarks, etc.), and .08 (Use of Summary Statements); (2) delete Temporary Dual FINRA-NYSE Rule 409T (Statements of Accounts to Customers) and Temporary Dual FINRA-NYSE Rule Interpretation 409T; and (3) make other non-substantive and technical changes in Rule 2231 and to other FINRA rules due to this proposed rule change. As a result of these changes, FINRA members that are not NYSE members would be required to comply with provisions that previously only applied to NYSE members. In addition to the specific points below, as a general matter, FINRA stated that harmonizing the NYSE provisions into Rule 2231 would provide greater clarity and regulatory efficiency to all FINRA member firms.<sup>13</sup> Further, FINRA stated that with respect to proposed Supplementary Materials .01 and .03 through .08, the proposed rule change would not impose additional material burdens on firms as it is substantially similar to existing rules or otherwise consistent with current guidance.<sup>14</sup>

B. Proposed Supplementary Materials as modified by Amendment No. 1

1. New Supplementary Material .01 (Compliance with Rule 4311)

FINRA's proposed rule change would amend Rule 2231 by adding new Supplementary Material .01, which would remind firms of their obligations under FINRA Rule 4311 (Carrying Agreements), including specifically the rights and obligations of carrying firms under Rule 4311(c)(2).<sup>15</sup> Rule 4311 generally governs the requirements applicable to FINRA members

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<sup>13</sup> See Notice, 86 FR at 55643.

<sup>14</sup> See Notice, 86 FR at 55648.

<sup>15</sup> See Proposed Supplementary Material .01.

when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. In general, Rule 4311(c) requires each carrying agreement pursuant to which accounts are to be carried on a fully disclosed basis to specify the responsibilities of each party to the agreement, including at a minimum the allocation of the responsibilities set forth in paragraphs 4311(c)(1)(A) through (I) and (c)(2). Among those responsibilities, Rule 4311(c)(2) requires each carrying agreement pursuant to which accounts are to be carried on a fully disclosed basis to expressly allocate to the carrying firm responsibility for safeguarding funds and securities under Exchange Act Rule 15c3-3 (Customer protection – reserves and custody of securities)<sup>16</sup> and for preparing and transmitting account statements to customers.

FINRA stated that reminding firms of their obligations under Rule 4311 in proposed Supplementary Material .01 would emphasize the importance of ensuring the accuracy and integrity of customer account statements.<sup>17</sup>

2. New Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons or Entities)

Rule 2231 does not currently address the transmission of customer account statements to third parties. In contrast, NYSE Rule 409T(b) prohibits, without NYSE’s consent, the delivery of confirmations, statements, or other communications to a nonmember customer: (1) in care of a person holding power of attorney (“POA”) over the customer’s account unless either (a) the customer has provided written instructions to the member organization 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 the customer; or

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<sup>16</sup> 17 CFR 240.15c3-3.

<sup>17</sup> See Notice, 86 FR at 55643.

(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.<sup>18</sup>

Proposed Supplementary Material .02 would address the transmission of customer account statements to third parties in a manner similar, but not identical to, NYSE Rule 409T.<sup>19</sup> Specifically, proposed Supplementary Material .02 to Rule 2231 would prohibit member firms from sending customer account statements to third parties unless: (1) the customer provided written instructions to the member to send statements to such third parties; and (2) the member sends duplicate account statements directly to the customer either in paper format or electronically.<sup>20</sup> Proposed Supplementary Material .02 would add that a FINRA member may cease sending duplicate account statements to a customer where a court of competent jurisdiction has appointed a guardian, conservator, trustee, personal representative or other person with legal authority to act on a customer's behalf, and such court-appointed fiduciary provides written instructions to the member and furnishes to the member an official copy of the court appointment that establishes authority over the customer's accounts.<sup>21</sup> Under proposed Supplementary Material .02, a member would continue to be able to provide duplicate customer account statement(s) to third parties as required for compliance with FINRA Rules 2070 (Transactions

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<sup>18</sup> See NYSE Rule 409T(b); see also Notice, 86 FR at 55643.

<sup>19</sup> See Notice, 86 FR at 55643.

<sup>20</sup> See Proposed Supplementary Material .02(a).

<sup>21</sup> See Proposed Supplementary Material .02(b).

Involving FINRA Employees) and 3210 (Accounts at Other Broker-Dealers and Financial Institutions) or other similar applicable federal securities laws, rules and regulations.<sup>22</sup>

FINRA stated it believes proposed Supplementary Material .02 achieves the appropriate balance between ensuring customers receive their account statements so that they may monitor their account activity and recognizing there are special circumstances where firms may stop delivery of account statements to customers.<sup>23</sup>

3. New Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations)

FINRA's proposed rule change would add new Supplementary Material .03 to FINRA Rule 2231, which would allow FINRA members to satisfy their Rule 2231 delivery obligations using electronic media, subject to compliance with standards established by the Commission on the use of electronic media for delivery purposes.<sup>24</sup> FINRA stated this provision would be consistent with prior FINRA guidance on the use of electronic media to satisfy delivery obligations.<sup>25</sup>

4. New Supplementary Material .04 (Compliance with Rule 3150)

FINRA's proposed rule change would add new Supplementary Material .04 to Rule 2231, which would permit FINRA members to hold customer mail, including customer account statements or other communications relating to a customer's account, subject to the requirements

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<sup>22</sup> See Proposed Supplementary Material .02(c).

<sup>23</sup> See Notice, 86 FR at 55644.

<sup>24</sup> See Proposed Supplementary Material .03; see also Notice, 86 FR at 55644 (citing Securities Act Release No. 7233 (October 6, 1995); 60 FR 53458 (October 13, 1995); Securities Act Release No. 7288 (May 9, 1996); 61 FR 24644 (May 15, 1996); Securities Act Release No. 7856 (April 28, 2000); 65 FR 25843, 25854 (May 4, 2000)).

<sup>25</sup> See Notice, 86 FR at 55644 (citing Notice to Members 98-3 (January 1998)).

of FINRA Rule 3150 (Holding of Customer Mail).<sup>26</sup> In general, Rule 3150 allows FINRA members to hold customer mail for a specific time period in accordance with the customer's written instructions if the member meets specified conditions.<sup>27</sup>

5. New Supplementary Material .05 (Information to be Disclosed on Statement)

NYSE Rule Interpretation 409T(a)/02 requires the front of a customer account statement to disclose: (1) the identity of introducing and carrying organizations, and their respective phone numbers for service; (2) that the carrying organization is a member of the Securities Investor Protection Corporation ("SIPC");<sup>28</sup> and (3) the opening and closing account balances.<sup>29</sup> Note 1 to NYSE Rule Interpretation 409T(a)/02 provides that the Commission "has stated that under the [Exchange Act] Rule 15c3-1(a)(2)(iv),<sup>30</sup> 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. 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."<sup>31</sup>

FINRA's proposed rule change would incorporate NYSE Rule Interpretation 409T(a)/02, including note 1, without substantive changes, as Supplementary Material .05 to FINRA Rule

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<sup>26</sup> See Proposed Supplementary Material .04.

<sup>27</sup> See Notice, 86 FR at 55644.

<sup>28</sup> Subject to limitations, SIPC protects against the loss of cash and securities – such as stocks and bonds – held by a customer at a financially-troubled SIPC-member brokerage firm. See SIPC's website, available at <https://www.sipc.org/for-investors/what-sipc-protects>.

<sup>29</sup> See NYSE Rule Interpretation 409T(a)/02.

<sup>30</sup> 17 CFR 240.15c3-1(a)(2)(iv).

<sup>31</sup> See NYSE Rule Interpretation 409T(a)/02 at note 1 (citing Exchange Act Release No. 31511 (November 24, 1992)).



2231. Proposed Supplementary Material .05 would require the following information to be clearly and prominently disclosed on the front of customer account statements: (1) the identity of the introducing firm and carrying firm, if different, and their respective contact information for customer service; however, 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; (2) that the carrying firm is a SIPC member; and (3) the opening and closing balances for the account.<sup>32</sup>

FINRA stated that proposed Supplementary Material .05 would incorporate NYSE Rule Interpretation 409T(a)/02 without substantive changes. FINRA also stated that proposed Supplementary Material .05 would give member firms adequate guidance and flexibility in providing the specified information while also ensuring that SIPC status of the clearing firm is disclosed on the front of the statement.<sup>33</sup>

#### 6. New Supplementary Material .06 (Assets Externally Held)

Rule 2231 does not currently address how FINRA members should disclose assets they do not carry on behalf of customers and that are not included on the firms’ books and records. In contrast, NYSE Rule Interpretation 409T(a)/04 provides that where a statement of account includes assets as to which a 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.<sup>34</sup> In addition, the statement must clearly indicate that: (1) such externally held assets are included on the statement

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<sup>32</sup> See Proposed Supplementary Material .05.

<sup>33</sup> See Notice, 86 FR at 55644 and 55655.

<sup>34</sup> See NYSE Rule Interpretation 409T(a)/04.

solely as a courtesy to the customer; (2) that information (including valuation) is derived from the customer or other external source for which the member organization is not responsible, and (3) such externally held assets are not covered by SIPC.<sup>35</sup>

FINRA's proposed rule change would incorporate the requirements of NYSE Rule Interpretation 409T(a)/04, without substantive changes, as Supplementary Material .06 to Rule 2231. Proposed Supplementary Material .06 would require that where a customer account statement includes assets that the member firm does not carry on behalf of the customer and that are not included on the member firm's books and records, such assets must be clearly and distinguishably separated on the statement.<sup>36</sup> In such cases, proposed Supplementary Material .06 would require FINRA members to: (1) clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer; (2) 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 (3) identify that such externally held assets may not be covered by SIPC.<sup>37</sup>

7. New Supplementary Material .07 (Use of Logos, Trademarks, etc.)

Rule 2231 does not currently address how logos, trademarks, or the identification of persons other than introducing or carrying firms should appear on customer account statements. In contrast, NYSE Rule Interpretation 409T(a)/05 requires that where a logo, trademark, or other identification of a person other than the introducing firm or carrying firm appears on an account statement, the identity of such person and the relationship to the introducing, carrying, or other

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Id.

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See Proposed Supplementary Material .06.

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See Proposed Supplementary Material .06(a)-(c).

organization included on the statement must be provided and may not be misleading or confusing to customers.<sup>38</sup>

FINRA’s proposed rule change would incorporate, without substantive changes, NYSE Rule Interpretation 409T(a)/05 as proposed Supplementary Material .07 to Rule 2231.<sup>39</sup> Proposed Supplementary Material .07 would require that 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. FINRA stated that proposed Supplementary Material .07 would be consistent with the general requirements of FINRA Rule 2210 (Communications with the Public), which, among other things, prohibits FINRA members from publishing, circulating, or distributing communications that they know or have reason to know contain any untrue statement of material fact or are otherwise false or misleading.<sup>40</sup>

#### 8. New Supplementary Material .08 (Use of Summary Statements)

Rule 2231 does not currently address FINRA member obligations where the member holds a customer’s account and another person, who separately offers related financial products or services to the same customer, jointly provide their respective customer account statements together with a statement summarizing or combining assets held in different accounts (“summary statements”).<sup>41</sup> In contrast, NYSE Rule Interpretation 409T(a)/06 states that where a member

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<sup>38</sup> See NYSE Rule Interpretation 409T(a)/05.

<sup>39</sup> See Proposed Supplementary Material .07; see also Notice, 86 FR at 55645.

<sup>40</sup> Id.; see also FINRA Rule 2210(d)(1)(B).

<sup>41</sup> See Notice, 86 FR at 55645. FINRA stated that, in general, a summary statement reflects information from entities that are part of a financial services “group” or “family” or

organization carrying a customer's account and another person(s) who separately offers financial related products/services to the same customer seek to jointly formulate and/or distribute their respective customer account statements together with a summary statement, the summary statement must: (1) indicate that it is provided for informational purposes and includes assets held at different entities; (2) identify each entity from which information is provided or assets are being held are included, their relationship to each other, and their respective functions (e.g., introducing or carrying brokerage firms, fund distributor, banking or insurance product providers, etc.); (3) clearly distinguish between assets held by each entity by use of columns, coloring or other distinct form of demarcation; (4) identify the customer's account number at each entity; (5) provide a telephone number for customer service at each entity; (6) disclose which entity carries each of the different assets or categories of assets included on the summary statement; and (7) identify each entity that is a SIPC member.<sup>42</sup>

FINRA's proposed rule change would incorporate the requirements of NYSE Rule Interpretation 409T(a)/06, with some revisions, as proposed Supplementary Material .08 to Rule 2231.<sup>43</sup> Proposed Supplementary Material .08 would state that 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 summary statement

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where a firm carries accounts for another broker-dealer that is part of such group or family. FINRA stated that a summary statement provides an overview of a customer's accounts at separate entities and is supported by and derived from the detail on the separate underlying respective account statements. Id.

<sup>42</sup> See NYSE Rule Interpretation 409T(a)/06.

<sup>43</sup> See Notice, 86 FR at 55645.

the member is required to: (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 customer service contact information 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 SIPC member.<sup>44</sup> Proposed Supplementary Material .08 would also require FINRA members to: (1) ensure that when summary statements aggregate the values of the accounts summarized or portions thereof, such aggregation is recognizable as having been arithmetically derived from the separately stated totals or their components;<sup>45</sup> (2) distinguish the beginning and end of each separate statement by color, pagination or other distinct form of demarcation;<sup>46</sup> (3) ensure that there is a written agreement between the clearing 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

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<sup>44</sup> See Proposed Supplementary Material .08(a)(1)-(6).

<sup>45</sup> See Proposed Supplementary Material .08(b).

<sup>46</sup> See Proposed Supplementary Material .08(c).

information included on its respective statements;<sup>47</sup> and (4) ensure the summary statement complies with Rule 2231.<sup>48</sup>

FINRA stated these requirements would help ensure customer account statements clearly identify the respective entities involved in a summary statement and distinguish brokerage assets from non-brokerage assets on such statements.<sup>49</sup>

C. NYSE Provisions to be Deleted and not Harmonized with Rule 2231

The proposed rule change would delete NYSE Rule 409T and NYSE Rule Interpretation 409T in their entirety on the basis that the underlying concepts in these provisions will have been included in Rule 2231, are duplicative of other rules, or are outdated.<sup>50</sup> The following describes portions of the NYSE Provisions that would not be incorporated into Rule 2231.

1. NYSE Rule 409T(b) (Confirmations or Other Communications)

As stated above, NYSE Rule 409T(b) currently allows a customer to instruct a firm to direct account statements, confirmations or other communications to a third party holding a POA over the account where the customer either provided the firm written instructions or the firm continued to send the customer duplicate copies of the statements, confirmations or other communications.<sup>51</sup> Proposed Supplementary Material .02 would address the transmission of customer account statements to third parties in a manner similar, but not identical, to NYSE Rule 409T.<sup>52</sup> FINRA stated that the scope of proposed Supplementary Material .02 would be limited

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<sup>47</sup> See Proposed Supplementary Material .08(d).

<sup>48</sup> See Proposed Supplementary Material .08(e).

<sup>49</sup> See Notice, 86 FR at 55645.

<sup>50</sup> See Notice, 86 FR at 55646.

<sup>51</sup> See NYSE Rule 409T(b); see also Notice, 86 FR at 55653.

<sup>52</sup> See Notice, 86 FR at 55643.

to customer account statements, and would not apply to confirmations or other communications.<sup>53</sup> FINRA stated that the delivery requirements of confirmations are already governed by Exchange Act Rule 10b-10 (Confirmation of transactions)<sup>54</sup> and FINRA Rule 2232 (Customer Confirmations).<sup>55</sup> Further, FINRA stated that including the term “other communications” would inappropriately capture unintended operational communications with third parties (e.g., custodians, transfer agents, and counterparties) where firms need to send “communications” about a customer’s account in order to provide a service requested for the customer.<sup>56</sup>

2. Supplementary Material .10(1)-(6) to NYSE Rule 409T (Exceptions to NYSE Rule 409T(b))

Supplementary Material .10 to NYSE Rule 409T establishes exceptions to NYSE Rule 409T(b). Specifically, Supplementary Material .10 to NYSE Rule 409T states that notwithstanding NYSE Rule 409T(b), a NYSE member organization may address confirmations, statements or other communications to certain nonmember customers (e.g., 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).<sup>57</sup> In light of the proposed elimination of NYSE Rule 409T, the proposed rule change would also eliminate the exceptions found in Supplementary Material .10(1)-(6) of NYSE Rule 409T.

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<sup>53</sup> See Notice, 86 FR at 55646.

<sup>54</sup> 17 CFR 240.10b-10.

<sup>55</sup> See Notice, 86 FR at 55646.

<sup>56</sup> See Notice, 86 FR at 55651.

<sup>57</sup> See Supplementary Material .10 to NYSE Rule 409T.

3. NYSE Rule 409T(e)(1) (Legend on Account Statements Pertaining to Firm's Financial Statements)

NYSE Rule 409T(e)(1) currently requires the inclusion of a legend on all account statements that: (1) notifies customers that a financial statement of the organization is available for inspection at its offices or a copy can be mailed upon request; (2) advises customers (a) to report promptly any inaccuracy or discrepancy in that person's account to their brokerage firm and (b) if a customer's account is subject to a clearing agreement pursuant to Exchange Rule 382, that such notification be sent to both the introducing firm and the clearing firm; and (3) advises the customer that any oral communications with either the introducing firm or the clearing firm should be reconfirmed in writing in order to further protect the customer's rights under the Securities Investor Protection Act (SIPA).<sup>58</sup> FINRA stated the proposed rule change would eliminate this requirement in light of existing requirements under: (1) Exchange Act Rule 17a-5(c) (Reports to be Made by Certain Brokers and Dealers),<sup>59</sup> which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers; (2) FINRA Rule 2261 (Disclosure of Financial Condition), which requires a member to make information relative to a FINRA member's financial condition available for inspection by customers, upon request;<sup>60</sup> and (3) Rule 2231(a), which requires a general securities member to include in the account statement a statement advising a customer to report promptly any inaccuracy or discrepancy in that person's account to the member firm, and

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<sup>58</sup> See NYSE Rule 409T(e).

<sup>59</sup> See 17 CFR 240.17a-5(c) (Customer Statements).

<sup>60</sup> See Notice, 86 FR at 55646.



that any oral communication to the member firm should be reconfirmed in writing to further protect the customer's rights, including rights under SIPA.<sup>61</sup>

4. NYSE Rule 409T(g) (Duplicate Copies of Monthly Statements to Guarantors)

NYSE Rule 409T(g) provides that member organizations carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless the guarantors have specifically provided in writing that they do not want such statements sent to them. FINRA stated the substance of NYSE Rule 409T(g) is consistent with the general requirement in proposed Supplementary Material .02 to obtain written instructions from customers to send account statements to third parties.<sup>62</sup> Accordingly, the proposed rule change would eliminate NYSE Rule 409T(g).

5. Supplementary Material .10(7) to NYSE Rule 409T (Holding Customer Mail)

Supplementary Material .10(7) to NYSE Rule 409T states that under certain circumstances, a member organization may hold mail for customers who will not be at their usual address for the period of their absence.<sup>63</sup> FINRA stated the proposed rule change would eliminate the concept of holding customer mail set forth in Supplementary Material .10(7) to NYSE Rule 409T. FINRA also stated that FINRA members' obligations concerning this activity are addressed in FINRA Rule 3150 (Holding of Customer Mail), and that proposed Supplementary Material .04 to Rule 2231 would expressly permit members to hold customer mail consistent with Rule 3150.<sup>64</sup>

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<sup>61</sup> See Notice, 86 FR at 55649.

<sup>62</sup> See Notice, 86 FR at 55646.

<sup>63</sup> See Supplementary Material .10(7) to NYSE Rule 409T.

<sup>64</sup> See Notice, 86 FR at 55646.

6. NYSE Rule Interpretation 409T(a)/03 (Use of Third Party Agents)

NYSE Rule Interpretation 409T(a)/03 states that prior to utilizing a third party agent to prepare and/or transmit statements of accounts to customers, an NYSE member organization must represent/undertake in writing to NYSE that: (1) the third party is acting as an agent for the member organization; (2) the member organization retains responsibility for compliance with NYSE Rule 409T(a); (3) the member organization has developed procedures/controls for reviewing and testing the accuracy of account statements prepared and/or transmitted by the third party agent; and (4) the member organization will retain copies of all such account statements in accordance with applicable books and records requirements.<sup>65</sup> In addition, NYSE Rule Interpretation 409T(a)/03 states that the allocation of responsibilities for the preparation and/or transmission of statements to any person other than a carrying organization pursuant to an agreement approved by the NYSE in accordance with Exchange Rule 382 (Carrying Agreements) is deemed to be utilization of a third party agent; and provides that 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.<sup>66</sup> FINRA stated the proposed rule change would eliminate NYSE Rule Interpretation 409T(a)/03 because such arrangements are addressed in FINRA Rule 4311 (Carrying Agreements) and other relevant guidance.<sup>67</sup>

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<sup>65</sup> See NYSE Rule Interpretation 409T(a)/03.

<sup>66</sup> Id.

<sup>67</sup> See Notice, 86 FR at note 29 (citing Notice to Members 05-48 (July 2005) (describing a member's responsibilities when outsourcing activities to third party service providers)), and accompanying text.

7. NYSE Rule Interpretation 409T(b)/01 (Standards for Holding Mail for Foreign Customers – NYSE Rule 409T(b)(2) Waivers)

NYSE Rule Interpretation 409T(b)/01 currently provides detailed requirements for a member organization requesting that NYSE agree to let it hold a foreign customer's confirmations, statements, and broker-dealer financial statements.<sup>68</sup> FINRA stated the proposed rule change would eliminate this interpretation because FINRA member obligations with respect to holding customer mail are already addressed by FINRA Rule 3150 (Holding of Customer Mail), which is referenced in proposed Supplementary Material .04 to Rule 2231.<sup>69</sup>

D. Technical Changes and Amendment No. 1

Interpretative Material (“IM”)-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) and IM-1013-2 (Membership Waive-In Process for Certain NYSE American LLC Member Organizations) describe a waive-in membership application process for some member organizations of the NYSE and NYSE American LLC.<sup>70</sup> FINRA stated that, subject to specified terms set forth in these interpretative materials, firms admitted to FINRA membership through either of these provisions (*i.e.*, “waived-in firms”) are not subject to the remaining FINRA rules that have yet to be harmonized with their corresponding NYSE rules or interpretations under the Temporary Dual FINRA-NYSE Member Rule Series.<sup>71</sup> Currently, these rules are Rule 2231 and the NYSE Provisions. The proposed rule

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<sup>68</sup> See NYSE Rule Interpretation 409T(b)/01.

<sup>69</sup> See Notice, 86 FR at 55646.

<sup>70</sup> See Notice, 86 FR at 55646-7.

<sup>71</sup> See Notice, 86 FR at 55647.

change would amend IM-1013-1 and IM-1013-2 to remove the reference to Rule 2231 as all waived-in firms will become subject to Rule 2231, as amended herein.<sup>72</sup>

FINRA also proposed Amendment No. 1 to make technical changes to the proposed rule change by changing the term “clearing firm” to “carrying firm” in the following places: (1) proposed Rule 2231(a); (2) proposed Supplementary Material .05(a)-(b) to Rule 2231; (3) proposed Supplementary Material .07 to Rule 2231; and (4) proposed Supplementary Material .08(d) to Rule 2231.<sup>73</sup> FINRA stated that changing the term “clearing firm” to “carrying firm” would maintain consistency given the proposed supplementary materials are derived largely from their corresponding NYSE provisions, which use the term “carrying organization.”<sup>74</sup>

E. Effective Date

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a regulatory notice to be published no later than 365 days following Commission approval.<sup>75</sup> FINRA also stated that the proposed rule change would apply prospectively.<sup>76</sup> For example, FINRA stated that a member firm with a customer having a preexisting arrangement to deliver account statements to a third party that was established before the effective date of the proposed rule change would not be subject to the requirements of proposed Supplementary Material .02 to Rule 2231 solely with respect to such account until that pre-existing third party delivery arrangement is modified in any manner; further, where any

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<sup>72</sup> Id.

<sup>73</sup> See OIP and Amendment No. 1, 87 FR at 1202.

<sup>74</sup> Id.

<sup>75</sup> See Notice, 86 FR at 55647.

<sup>76</sup> See Notice, 86 FR at 55654.

existing or new customer of the firm seeks to establish a third party delivery arrangement on or after the effective date of the proposed rule change, the firm would be subject to the terms of the new rule.<sup>77</sup>

### III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters,<sup>78</sup> and FINRA’s response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to national securities associations.<sup>79</sup> Specifically, the Commission finds the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other

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<sup>77</sup> See Notice, 86 FR at note 73 (stating that the proposed rule change is not intended to impact preexisting agreements that use third party agents if they comport with applicable FINRA rules and guidance).

<sup>78</sup> See letters from Bernard V. Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) to Vanessa A. Countryman, Secretary, Commission, dated October 27, 2021 (“SIFMA Letter”) (stating that “SIFMA understands and fully supports FINRA in its effort to protect sensitive customer information from unauthorized persons”); Clifford Kirsch and Eric Arnold, Eversheds Sutherland LLP, on behalf of Committee of Annuity Insurers (“CAI”) to Secretary, Commission, dated October 27, 2021 (“CAI Letter”) (stating that CAI is “generally supportive of the proposed changes”); and letter from Emily Micale, Director, Federal Regulatory Affairs, Insured Retirement Institute, Inc. (“IRI”) to Vanessa A. Countryman, Secretary, Commission, dated October 27, 2021 (“IRI Letter”) (stating that it “supports SIFMA’s comments with respect to its requests and recommendations regarding FINRA’s Customer Account Statement Proposal”); see also letter from Anonymous, dated October 28, 2021. Anonymous stated that FINRA should also consider amending FINRA Rule 3210 (Accounts at Other Broker-Dealers and Financial Institutions) to consider whether the Commission’s Consolidated Audit Trail could be leveraged to eliminate the operational burden associated with complying with Rule 3210. In response, FINRA stated that while it appreciates Anonymous’ comments, it considers them to be outside the scope of the proposed rule change. See FINRA Response Letter, at 5.

<sup>79</sup> In approving this rule change, the Commission has considered the rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.<sup>80</sup>

A. Proposed Supplementary Materials .01(Compliance with Rule 4311)

As stated above, proposed Supplementary Material .01 would remind firms of their obligations under Rule 4311, which governs the requirements applicable to member firms when entering into agreements for the carrying of any customer accounts in which securities transactions can be effected. FINRA stated that proposed Supplementary Material .01 would emphasize the importance of ensuring the accuracy and integrity of customer account statements.<sup>81</sup> We received no comments on this provision.

Reminding firms of their obligations under Rule 4311 in Supplementary Material .01 to Rule 2231 would help firms comply with their regulatory obligations under Rule 4311, which were designed to protect their customers. Accordingly, the Commission finds that proposed Supplementary Material .01 to Rule 2231 is designed to protect investors and is in the public interest.

B. Proposed Supplementary Material .02 (Transmission of Customer Account Statements to Other Persons or Entities)

As stated above, proposed Supplementary Material .02 would prohibit FINRA members from sending customer account statements to third parties unless the customer provides a member written instructions to do so, and the member sends duplicate account statements directly to the customer either in paper format or electronically. Proposed Supplementary Material .02 would allow FINRA members to cease sending duplicate account statements to the

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<sup>80</sup> 15 U.S.C. 78o-3(b)(6).

<sup>81</sup> See Notice, 86 FR at 55643.

customer when a court appoints a guardian, conservator, trustee, personal representative or other person with legal authority to act on a customer's behalf, and such court-appointed fiduciary provides the member written instructions to cease sending duplicate statements to the customer and an official copy of the court appointment that establishes authority over the customer's accounts.

Multiple commenters stated that the proposed Supplementary Material .02 would improperly balance investor protection against investor preferences.<sup>82</sup> In particular, commenters stated the requirement to send duplicate account statements to customers even when customers request otherwise through an agent or attorney-in-fact appointed under a valid POA would undermine the customer's intent for naming the POA.<sup>83</sup> Commenters stated also that having the proposed exception only available to court-appointed fiduciaries and the proposed electronic delivery option are insufficient.<sup>84</sup> The commenters, therefore, recommended that the proposed

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<sup>82</sup> See SIFMA Letter, at 1 (“Of greatest concern to SIFMA is Supplemental Material .02’s proposed requirement to continue to send duplicate account statements to customers in contravention to their express wishes”); see SIFMA Letter, at 2-3 (“the inability to stop delivery of account statements to incapacitated or vulnerable customers, particularly those living in assisted-living facilities, nursing homes, or at home where non-family, paid caregivers regularly have access to sensitive customer information and are as likely [to] perpetuate fraud against the customer should be just as concerning”); see also IRI Letter, at 1 (“IRI expresses its support for SIFMA’s specific comments presenting recommendations, clarifications, and proposals as detailed in [SIFMA’s] comment letter”).

<sup>83</sup> See SIFMA Letter and IRI Letter.

<sup>84</sup> See SIFMA Letter and IRI Letter (both stating that requiring the delivery of duplicate account statements to vulnerable customers is just as likely to result in fraud as allowing POA holders to cease delivery because those living in assisted-living facilities, nursing homes, or at home, where non-family, paid caregivers regularly have access to sensitive customer information are just as likely perpetuate fraud as POA holders. Moreover, these commenters stated customers often cannot provide the consent required to establish electronic delivery of account statements because their agents or attorneys-in-fact do not contact the member firm until the customer becomes incapacitated.).

exception to the continuous delivery requirement should be expanded to include agents or attorneys-in-fact appointed under a valid durable or springing POA who provide written instructions to cease sending statements to customers.<sup>85</sup>

In response, FINRA stated that it appreciated the concerns commenters raised about customers for whom their agent or attorney-in-fact may have a protective reason to instruct a firm to stop the delivery of account statements, particularly for customers who still receive account statements in paper format.<sup>86</sup> Nonetheless, FINRA stated also that the ability to review account statements, in paper format or electronically, is a way that customers may discover inaccuracies or discrepancies in their accounts, and, potentially, unauthorized transactions or financially exploitative activities that have occurred in their accounts. FINRA stated that this ability must be preserved in all but compelling circumstances.<sup>87</sup> FINRA also stated that fraud or financially exploitative or abusive activity may manifest in a variety of ways, including misuse of a POA.<sup>88</sup> Further, FINRA stated that courts appoint fiduciaries based on their objective review of the facts and circumstances of a case. Thus, limiting the exception to where a court-appointed fiduciary seeks the cessation of the delivery of account statements to a customer would appropriately balance the investor protection functions of ensuring customers' ability to monitor

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<sup>85</sup> See SIFMA Letter and IRI Letter (both stating that POAs are an integral part of modern estate plans and provide the benefit of not having to go to court to have a fiduciary appointed, which can be costly, time-consuming, and public).

<sup>86</sup> See FINRA Response Letter, at 3. FINRA also stated that the proposed rule change would establish other protections such as proposed Supplementary Material .03, which would allow a customer that is concerned about the delivery of account statements in paper format to elect to receive such statements electronically. See Notice, 86 FR at 55648.

<sup>87</sup> See FINRA Response Letter, at 3

<sup>88</sup> Id.



and verify transactions occurring in their accounts, by limiting a firm's ability to cease delivery of unwanted duplicate account statements only in the kinds of exigent circumstances requiring a court-appointed fiduciary.<sup>89</sup> For these reasons, FINRA declined to amend the proposed rule change in response to the commenters' concerns.<sup>90</sup>

Rule 2231's statement delivery requirement provides customers with the ability to monitor and verify the transactions occurring in their accounts. The ability to review information regarding one's own securities account is a critical tool for customers to identify inaccuracies, and to detect and report potential fraud and financial exploitation involving their accounts on a timely basis. In some instances, however, the risk of receiving an account statement, particularly in physical form, may be higher than the risks associated with being unable to review them. Accordingly, while we acknowledge the general importance of customers receiving their account statements, there is also a potential risk, in certain cases, of having them delivered.

Permitting a court-appointed fiduciary to request the suppression of duplicate account statement delivery to a customer whom the fiduciary serves is a reasonable exception to Rule 2231's general requirements.<sup>91</sup> This exception to the requirement to continuously provide a customer account statement strikes a reasonable balance between the investor protection goals served by a customer's receipt of the statement on a continuous basis and the ability to suppress delivery in exigent circumstances where a court-appointed fiduciary requests the customer's

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<sup>89</sup> Id.

<sup>90</sup> See FINRA Response Letter, at 9.

<sup>91</sup> The Commission reminds broker-dealers that nothing in Rule 2231 affects a broker-dealer's obligations with respect to delivery of trade confirmations, which remain governed by Exchange Act Rule 10b-10 and FINRA Rule 2232.

broker-dealer to cease delivery. Further, proposed Supplementary Material .02 would not change the ability of firms to send account statements to customers electronically, consistent with prior Commission guidance.<sup>92</sup>

Accordingly, for the reasons set forth above, the Commission finds that proposed Supplementary Material .02 to Rule 2231 is designed to protect investors and is in the public interest.

C. Proposed Supplementary Material .03 (Use of Electronic Media to Satisfy Delivery Obligations)

As stated above, proposed Supplementary Material .03 would allow member firms to satisfy their delivery obligations under Rule 2231 by using electronic media subject to compliance with standards established by the Commission on the use of electronic media for delivery purposes.<sup>93</sup> FINRA stated that this proposed supplementary material would be consistent with prior guidance FINRA has issued on the use of electronic media to satisfy delivery obligations.<sup>94</sup> FINRA also stated that proposed Supplementary Material .03 would not impose any new delivery obligations beyond existing requirements.<sup>95</sup> We received no comments on this provision.

Allowing member firms to satisfy their delivery obligations under Rule 2231 by using electronic media subject to compliance with standards established by the Commission on the use of electronic media for delivery purposes would help firms comply with Rule 2231 by providing an alternative to mail for delivering customer account statements. In addition, proposed

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<sup>92</sup> See supra note 24 and accompanying text.

<sup>93</sup> Id.

<sup>94</sup> See supra note 25.

<sup>95</sup> See Notice, 86 FR at 55655.

Supplementary Material would help ensure that customers continue to receive their account statements using their expressed desired delivery method. Accordingly, the Commission finds that proposed Supplementary Material .03 to Rule 2231 is designed to protect investors and is in the public interest.

D. Proposed Supplementary Material .04 (Compliance with Rule 3150)

As stated above, proposed Supplementary Material .04 would emphasize that member firms are 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, which sets forth the requirements applicable to member firms when they agree to hold a customer's mail. FINRA stated that proposed Supplementary Material .04 reminds firms of existing obligations and would not impose any additional burden.<sup>96</sup> We received no comments on this provision.

Reminding firms of their obligations under Rule 3150 when they agree to hold a customer's mail would help firms comply with their regulatory obligations under Rule 3150. Accordingly, for the reasons set forth above, the Commission finds that proposed Supplementary Material .04 to Rule 2231 is designed to protect investors and is in the public interest.

E. Proposed Supplementary Material .05 (Information to be Disclosed on Statement)

As stated above, proposed Supplementary Material .05 would specify the information that must be clearly and prominently disclosed on the front of a customer account statement, such as, the identity of the introducing and carrying organizations, that the carrying organization is a member of SIPC, and the opening and closing account balances for the customer's account.

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<sup>96</sup> See Notice, 86 FR at 55648.

FINRA stated that proposed Supplementary Material .05 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/02.<sup>97</sup> Deleting the NYSE rule in favor of a global FINRA rule would expand the coverage of these requirements to all FINRA members rather than just NYSE members. Proposed Supplementary Material .05 would provide customers with important information about their financial professionals and investments to help them evaluate their customer account statements. Accordingly, for the reasons set forth above, the Commission finds that proposed Supplementary Material .05 to Rule 2231 is designed to protect investors and is in the public interest.

F. Proposed Supplementary Material .06 (Assets Externally Held)

As stated above, proposed Supplementary Material .06 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/04, which provides that where a customer account statement includes assets the member organization 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 account statement. Proposed Supplementary Material .06 would also require customer account statements to: (1) clearly indicate that externally held assets are included on the statement solely as a courtesy to the customer; (2) disclose that information (including valuation) for externally held assets included on a statement is derived from the customer or other external sources for which the FINRA member is not responsible; and (3) identify that such externally held assets may not be covered by SIPC.

One commenter requested that FINRA clarify whether variable annuity or other registered annuity contracts would be deemed "externally held" under proposed Supplementary

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Id.

Material .06 when such contracts are held by the issuing insurance company.<sup>98</sup> The commenter stated that it would be most appropriate for these contracts to be deemed “externally held” and subject to proposed Supplementary Material .06.<sup>99</sup>

In response, FINRA stated proposed Supplementary Material .06 is not intended to alter the substantive terms or existing guidance pertaining to the NYSE’s current interpretation for the required disclosures on account statements for externally held assets as promulgated in NYSE Rule Interpretation 409T(a). Accordingly, proposed Supplementary Material .06 should not impact how firms currently treat variable annuity or other registered annuity contracts when such contracts are held by the issuing insurance company for purposes of interpreting “externally held.”<sup>100</sup> Nevertheless, FINRA stated that it would address scenarios regarding the application of the new supplementary materials, including new Supplementary Material .06, through its interpretive process on a case-by-case basis or through future rulemaking, as appropriate.<sup>101</sup> Accordingly, FINRA declined to amend the proposed rule change in response to the comment.<sup>102</sup>

Requiring all FINRA members’ (and not just NYSE members’) customer account statements to disclose how information, including valuation, for externally held assets is derived and identifying that such assets may not be covered by SIPC would provide useful information to a firm’s customers when reviewing their investments. Supplementary Material .06 is reasonably designed to distinguish, on the customer account statement, assets the member firm does not carry on behalf of a customer, and are not included on the member’s books and records, from

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<sup>98</sup> See CAI Letter.

<sup>99</sup> Id.

<sup>100</sup> See FINRA Response Letter, at 5-6.

<sup>101</sup> See FINRA Response Letter, at 5.

<sup>102</sup> See FINRA Response Letter, at 9.

those that are. Accordingly, for the foregoing reasons, the Commission finds that proposed Supplementary Material .06 to Rule 2231 is designed to protect investors and is in the public interest. The Commission also acknowledges FINRA's commitment to provide interpretations about the applicability of the rule, including about its applicability to specific products, as appropriate.

G. Proposed Supplementary Material .07 (Use of Logos, Trademarks, etc.)

As stated above, proposed Supplementary Material .07 would address a firm's use of logos, trademarks and other similar identification of a person on a customer account statement. FINRA stated that proposed Supplementary Material .07 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/05.<sup>103</sup> FINRA also stated that the proposed Supplementary Material .07 would be consistent with the general requirements of Rule 2210 (Communications with the Public).<sup>104</sup> We received no comments on this provision.

Proposed Supplementary Material .07 is substantively similar to rules the statutory basis for which the Commission has already considered,<sup>105</sup> and is consistent with FINRA Rule 2210. Further, proposed Supplementary Material .07 would provide greater clarity and regulatory efficiency to all FINRA member firms. Accordingly, for the reasons set forth above, the Commission finds that proposed Supplementary Material .07 to Rule 2231 is designed to protect investors and is in the public interest.

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<sup>103</sup> See Notice, 86 FR at 55645.

<sup>104</sup> Id.

<sup>105</sup> See supra note 11.

H. Proposed Supplementary Material .08 (Use of Summary Statements)

As stated above, proposed Supplementary Material .08 to Rule 2231 would incorporate without substantive changes NYSE Rule Interpretation 409T(a)/06, establishing obligations where a FINRA member holding a customer's account and another person who separately offers related financial products or services to the same customer jointly provide their respective account statements together with a statement summarizing or combining assets held in different accounts.

Commenters stated that FINRA's description of proposed Supplementary Material .08(d) in the Notice differs from the text of proposed Supplementary Material .08 and expressed concern that this wording difference between the proposed rule text and FINRA's description would create confusion for firms determining with whom to enter an agreement when preparing a joint statement and requested clarification.<sup>106</sup>

FINRA stated that proposed Supplementary Material .08 is not intended to alter the substantive terms or existing guidance pertaining to the current NYSE requirements governing the use of summary statements.<sup>107</sup> Accordingly, proposed Supplementary Material .08 would not

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<sup>106</sup> See SIFMA Letter and IRI Letter. Specifically, commenters stated that proposed Supplementary Material .08 states that where a member firm holds a customer's account and another person(s) who separately offers financial related products or services to the same customer seek to jointly provide their respective customer account statements together with a summary statement, the firm must, among other things "ensure that there is a written agreement *between the clearing 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" (emphasis added). In the Notice, however, FINRA describes proposed Supplementary Material .08 as requiring "a written agreement *between the parties* jointly formulating or distributing combined statements with the summary attesting that each entity has developed procedures and controls for testing the accuracy of its own information included on the statements" (emphasis added). Id.

<sup>107</sup> See FINRA Response Letter, at 6.

impact how firms currently comply with the supplemental obligations.<sup>108</sup> FINRA also stated that its description of proposed Supplementary Material .08 in the Notice does not change the proposed requirements of that supplementary material.<sup>109</sup> Accordingly, FINRA stated that similar to NYSE Rule Interpretation 409T(a)/06, under proposed Supplementary Material .08, a “clearing firm” must be a party to a written agreement with each other person jointly providing its respective customer account statements.<sup>110</sup>

Proposed Supplementary Material .08 would establish summary statement disclosure requirements for all FINRA members (rather than just NYSE members). These summary statement disclosure requirements (e.g., that the summary statement is provided for the customer’s convenience, does not replace other statements, identifies where assets are held, and which entities are SIPC members) would protect investors by clarifying key information about the investors’ assets to help them evaluate their investments. Accordingly, for the reasons set forth above, the Commission finds that proposed Supplementary Material .08 is designed to protect investors and is in the public interest.

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<sup>108</sup> Id.; see also Paragraph 4 of NYSE Rule Interpretation 409T(a)/06.

<sup>109</sup> See FINRA Response Letter, at 7.

<sup>110</sup> Id.



I. Proposed Deletion of NYSE Rule 409T and NYSE Rule Interpretation 409T

FINRA stated that the proposed rule change would delete the NYSE Provisions in their entirety on the basis that they are duplicative of other existing rules,<sup>111</sup> are outdated,<sup>112</sup> or the underlying concepts in these provisions will have been included in the proposed Supplementary Materials to Rule 2231.<sup>113</sup> As discussed more fully above, the Commission finds that

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<sup>111</sup> For example, NYSE Rule 409T(b) and Supplementary Material .10 to NYSE Rule 409T allow for the suppression of trade confirmations, and NYSE Rule 409T(g) provides that members organizations carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless the guarantors have specifically declared in writing that they do not want such statements sent to them. Because the delivery requirements of confirmations are governed by Exchange Act Rule 10b-10 (Confirmation of Transactions) and FINRA Rule 2232 (Customer Confirmations), and the general requirements of proposed Supplementary Material .02 cover duplicate delivery issues, FINRA is not incorporating these provisions into Supplementary Material .02. Moreover, NYSE Rule 409T(e)(1) requires a legend on account statements notifying customers that this member organization's financial statements are available for inspection upon request. Because Exchange Act Rule 17a-5(c) (Reports to be Made by Certain Brokers and Dealers) and FINRA Rule 2261 (Disclosure of Financial Condition) contain similar provisions, FINRA is not incorporating these provisions. Additionally, Supplementary Material .01(7) to NYSE Rule 409T states that 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, under certain circumstances, hold mail for a customer who will not be at his usual address for the period of his absence, and NYSE Rule Interpretation 409T(b)/01 provides guidelines for holding confirmations, statements, and broker-dealer financial statements for foreign customers. FINRA members' obligations concerning these activities are addressed in FINRA Rule 3150 (Holding of Customer Mail) and, thus, FINRA would not incorporate these provisions. NYSE Rule Interpretation 409T(a)/03 addresses the allocation of responsibilities when using third parties to prepare and transmit account to customers statements. These arrangements are addressed in FINRA Rule 4311 (Carrying Agreements) and other FINRA guidance, and, thus, would also not be incorporated. See Notice, 86 FR at 55646.

<sup>112</sup> For example, NYSE Rule 409T.10(1) through (6) provide exceptions to the requirements of NYSE Rule 409T(b) for persons having powers of attorney. As described above, proposed Supplementary Material .02 would provide a narrower exception for court-appointed fiduciaries. FINRA is therefore not incorporating these NYSE terms into Supplementary Material .02. See Notice, 86 FR at 55646.

<sup>113</sup> See Notice, 86 FR at 55646.

maintaining two versions of substantially similar rules could cause confusion and undermine firm compliance with their obligations regarding providing account statements to their customers, which could erode investor protections. For the reasons set forth above, the Commission finds that the proposed deletion of the NYSE Provisions is designed to protect investors and is in the public interest.

IV. Conclusion

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Exchange Act<sup>114</sup> that the proposed rule change (SR-FINRA-2021-024), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>115</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>114</sup> 15 U.S.C. 78s(b)(2).

<sup>115</sup> 17 CFR 200.30-3(a)(12).