

## Conduct Rules

### 3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

#### 3110. Books and Records

##### (a) Requirements

Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with SEC Rule 17a-4.

##### (b) Marking of Customer Order Tickets

(1) A person associated with a member shall indicate on the memorandum for the sale of any security whether the order is "long" or "short," except that this requirement shall not apply to transactions in debt securities. An order may be marked "long" if (A) the customer's account is long the security involved or (B) the customer owns the security and agrees to deliver the security as soon as possible without undue inconvenience or expense.

(2) A person associated with a member shall indicate on the memorandum for each transaction in a non-Nasdaq security, as that term is defined in the Rule 6700 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information.

##### (c) Customer Account Information

Each member shall maintain accounts opened after January 1, 1991 as follows:

(1) for each account, each member shall maintain the following information:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account; and

(D) if the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account, other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A) customer's tax identification or Social Security number;

(B) occupation of customer and name and address of employer; and

(C) whether customer is an associated person of another member; and

(3) for discretionary accounts, in addition to compliance with subparagraphs (1) and (2) above, and Rule 2510(b) of these Rules, the member shall:

(A) obtain the signature of each person authorized to exercise discretion in the account;

(B) record the date such discretion is granted; and

(C) in connection with exempted securities other than municipals, record the age or approximate age of the customer.

(4) For purposes of this Rule and Rule 2310 the term "institutional account" shall mean the account of:

(A) a bank, savings and loan association, insurance company, or registered investment company;

(B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions);  
or

(C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

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### **IM-3110. Customer Account Information**

(a) Members should be aware that, effective January 1, 1990, any transaction which involves a non-Nasdaq, non-exchange equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g-1 through 15g-9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) Additional information is required to be obtained prior to making recommendations to customers (see Rule 2310) and in connection with discretionary accounts (see Rule 2510).

(c) Accounts opened, and recommendations made prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) as previously in effect as set forth in Notice to Members 90-52 (August 1990).

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### **(d) Record of Written Complaints**

Each member shall keep and preserve in each office of supervisory jurisdiction, as defined in Rule 3010, either a separate file of all written complaints of customers and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaint as maintained in such office.

### **(e) "Complaint" Defined**

A "complaint" shall be deemed to mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

### **(f) Requirements When Using Predispute Arbitration Agreements With Customers**

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

(A) Arbitration is final and binding on the parties.

(B) The parties are waiving their right to seek remedies in court, including the right to jury trial.

(C) Pre-arbitration discovery is generally more limited than and different from court proceedings.

(D) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(2) Immediately preceding the signature line, there shall be a statement which shall be highlighted that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(3) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt

thereof on the agreement or on a separate document.

(4) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.

(5) The requirements of subparagraphs (1) through (4) shall apply only to new agreements signed by an existing or new customer of a member after September 7, 1989.

(6) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(7) The requirements of subparagraph (6) shall apply only to new agreements signed by an existing or new customer of a member after October 28, 1993.

#### **(g) Negotiable Instruments Drawn From A Customer's Account**

No member or person associated with a member shall obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each member shall maintain this authorization for a period of three years. This provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

(3) Each member shall maintain the authorization required by subparagraph (2) for a period of three years. This provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

#### **(h) Order Audit Trail System Record keeping Requirements**

(1) Each member that is a Reporting Member, as that term is defined in Rule 6951(n), shall record and maintain, with respect to each order, as that term is defined in Rule 6951(j), for such security that is received or executed at its trading department:

(A) an identification of each registered person who receives the order directly from a customer;

(B) an identification of each registered person who executes the order; and

(C) when an order is originated by the member and transmitted manually to another department, an identification of the department that originated the order.

(2) Each Reporting Member shall maintain and preserve records of the information required to be recorded under paragraph (h)(1) of this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).

(3) The records required to be maintained and preserved under paragraph (h)(1) of this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

#### ***Cross References***

- *Rule 2860(b)(17), Options, Maintenance of Records*

- *Rule 8210, Reports and Inspection of Books for Purpose of Investigating Complaints*

- *Rule 9552, Failure to Provide Information or Keep Information Current*

- *IM-2310-2, Fair Dealing with Customers*

[Amended eff. Aug. 3, 1987, Aug. 1, 1988, May 10, 1989; May 2, 1990 eff. for accounts opened and recommendations made after Jan. 1, 1991; Oct. 28, 1992; amended by SR-NASD-92-12 eff. Sept. 6, 1994; amended by SR-NASD-95-13

eff. June 9, 1995; amended by SR-NASD-95-39 eff. Oct. 10, 1996; amended by SR-NASD-96-28 eff. Dec. 2, 1996; amended by SR-NASD-97-24 eff. Feb. 15, 1998; amended by SR-NASD-97-56 eff. according to schedule in Rule 6957; amended by SR-NASD-98-10 postponed eff. date; amended by SR-NASD-98-31 eff. Apr. 7, 1998; amended by SR-NASD-98-35 eff. May 20, 1998; amended by SR-NASD-98-38 eff. according to schedule in Rule 6957; amended by SR-NASD-00-20 eff. Nov. 24, 2000; amended by SR-NASD-2003-131 eff. March 31, 2004; amended by SR-NASD-2003-110 eff. June 28, 2004.]

Selected Notices to Members: 86-29, 86-69, 87-15, 88-40, 88-83, 89-58, 90-52, 91-46, 92-65, 95-16, 95-54, 95-85, 96-44, 96-82, 98-11, 98-33, 98-47, 98-73, 00-78, 04-15, 04-36.

#### **Selected SEC Decisions**

##### **Failure to maintain records**

**Marshall and Mever, Inc., Comark Securities, Inc. and Gary J. Lundgren, SEC Rel. No. 34-23013 (1986).**

**Cal Caulfield and Co., Inc. and Calvin L. Caulfield, SEC Rel. No. 34-23050 (1986).**

**Mark James Hankoff, SEC Rel. No. 34-24390 (1987).**