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FINRA PROVIDES GUIDANCE ON THE USE OF NEGATIVE CONSENT FOR BULK TRANSFERS OF CUSTOMER ACCOUNTS AND DISCONTINUES RELATED PRIOR REVIEW PROCESS

On February 6, 2026, the Financial Industry Regulatory Authority, Inc. ("FINRA") issued [Regulatory Notice 26-03](#) (the "Notice") consolidating guidance on the use of negative consent letters for bulk transfers or assignments of customer accounts between FINRA members. Moreover, the Notice eliminates the current practice of submitting draft negative consent letters to FINRA staff for review; this change will become effective on April 1, 2026.

BACKGROUND

A FINRA member generally must obtain a customer's affirmative consent or instruction to transfer or assign the customer's account to another member. Similarly, FINRA members generally must obtain a customer's affirmative consent to assign a customer account to another member where the customer's account assets are not being transferred (for example, changing from one introducing firm to another where the account assets remain at the same clearing firm).

FINRA recognizes that in certain bulk transfer or assignment scenarios, obtaining affirmative consent from each customer is unworkable (such as when a firm ceases operations or faces time-sensitive financial or operational difficulties). In these cases, to minimize disruption and preserve customer access, FINRA has allowed members to use negative consent, i.e., FINRA members would send letters to customers providing notice that their accounts will be transferred or assigned unless they expressly object by a stated date. FINRA previously addressed use of negative consent in Notice to Members ("NTM") 02-57, after which members established the practice of submitting draft negative consent letters to FINRA staff to confirm compliance with NTM 02-57 and to obtain the staff's "no objection" prior to sending the letters to customers.

ELIMINATION OF FINRA STAFF REVIEW OF DRAFT LETTERS

Based on experience and member feedback, FINRA has concluded that the practice of submitting draft negative consent letters to FINRA for review can impose unnecessary burdens, particularly when the transfers or assignments must occur under tight time constraints or urgent business conditions. As a result, FINRA will discontinue this process effective April 1, 2026. FINRA will still evaluate members' use of negative consent letters when transferring or assigning accounts through its examination process.

Additionally, upon request, FINRA will continue to provide interpretive guidance regarding new or novel situations.

CONSOLIDATED BULK TRANSFER GUIDANCE

The Notice provides the following non-exhaustive list of situations in which FINRA members have used negative consent to effect bulk account transfers or assignments:

- **Change in Clearing Firm.** An introducing firm has entered into one or more new clearing arrangements and seeks to transfer some or all of its customer accounts to the new clearing firm(s).
- **Cessation of Business.** An introducing or clearing firm is going out of business (including due to financial or operational difficulties) and seeks to transfer all of its customer accounts to one or more introducing or clearing firms.
- **Divestiture of a Business Line.** An introducing or clearing firm is divesting a specific business line or area (e.g., retail brokerage business) and seeks to transfer the impacted customer accounts to one or more introducing or clearing firms.
- **Termination of Clearing Relationships.** After a clearing relationship between a clearing firm and an introducing firm ends, such as when the introducing firm has gone out of business and has not transferred its customer accounts, the clearing firm seeks to assign such customer accounts to one or more other introducing firms with which the clearing firm has a relationship.
- **Mergers and Acquisitions.** A firm has been acquired by or merged with one or more other members and seeks to transfer all its customer accounts to the new firm(s).
- **Networking Arrangements with Financial Institutions.** Following the end of a networking arrangement between a member and a financial institution pursuant to FINRA Rule 3160 (Networking Arrangements Between Members and Financial Institutions), the member seeks to move customer accounts opened under that arrangement to one or more members with which the financial institution has entered into a new networking relationship, at the direction of the financial institution.
- **Employee Equity Compensation and Retirement Plans.** Following the end of an arrangement between a member and an employer pertaining to an employee equity compensation plan or employer-sponsored retirement plan, the member seeks to move all customer accounts opened under the arrangement to a different member with which the employer has formed an arrangement, at the employer's direction.
- **Changes of Broker-Dealer of Record on Directly Held Accounts.** To change the broker-dealer of record on directly held accounts in specified situations, such as where a member is going out of business or a networking arrangement between a member and a financial institution has ended.

EFFECTIVE PRACTICES, MINIMUM DISCLOSURES AND OTHER CONSIDERATIONS

The Notice describes the following effective practices and minimum disclosures when using negative consent to effect a bulk transfer or assignment of customer accounts:

- **Customer Authorization.** FINRA reminds members of the significance of securing customers' prior written authorization to modify their accounts through negative consent. Members may obtain such authorization during the client onboarding process, such as in the account opening agreement.
- **Compliance with Regulatory and Legal Requirements.** Members must confirm that bulk transfers or assignments comply with applicable laws, rules and regulations, including, as applicable, FINRA Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations). Additionally, negative consent letters that constitute a retail communication for purposes of FINRA Rule 2210 (Communications with the Public) are subject to the rule's content standards. Other laws, rules and regulations may be relevant depending on the type of account, such as investment advisory accounts and retirement accounts.
- **Free Credit Balances and Sweep Programs.** An account transfer may include the movement of free credit balances in customer accounts from the delivering firm to the receiving firm, including balances resulting from the liquidation of products in a sweep program. Provided the transfer conforms with Rule 15c3-3(j) under the Securities Exchange Act of 1934 ("Rule 15c3-3(j)") and related Securities and Exchange Commission ("SEC") staff guidance, firms may utilize the negative consent letter to transfer the free credit balances. Additionally, where a transfer results in a change in sweep program offerings available to customers, the receiving firm may rely on the negative consent letter to immediately reinvest customers' free credit balances in products offered through its sweep program, provided the reinvestment conforms with Rule 15c3-3(j) and SEC staff guidance. Rule 15c3-3(j)(2)(ii) provides that a broker-dealer may transfer a customer's interest in one sweep program product to another, so long as the customer furnishes prior written affirmative consent to having free credit balances included in the sweep program and after being notified that the broker-dealer may change the products available under the sweep program. In assessing which sweep product to utilize for reinvestment, the receiving firm should confirm whether customers have given prior written affirmative consent to the delivering firm (such as through the customer account agreement) to have their free credit balances invested in different sweep products.
- **Timing.** Unless exigent circumstances exist, a member should provide customers with a minimum of 30 days' notice prior to moving or assigning their accounts through negative consent to a different member. FINRA states that exigent circumstances are rare and include situations such as a firm going out of business on short notice for unforeseen or unexpected reasons. FINRA also states that in some instances, customers would benefit from having more than 30 days' notice, or receiving more than one letter informing them of upcoming changes to their account.
- **Description.** Members should provide customers with a clear and concise description of the circumstances necessitating the transfer or assignment. Such information will enable customers to understand the rationale for the transfer or assignment and how it will impact their account, so

that they can assess whether the change is right for them. Members should consider furnishing customers with additional information that helps the customer's decision-making (*e.g.*, a brief description of the receiving firm's services and whether the receiving firm's products are comparable to those provided by the delivering firm) and with information regarding any immediate effects of the change (*e.g.*, notification of any trading limitations during the transfer or assignment process).

- **Opt-Out Provision.** Negative consent letters should contain a statement that the customer has the right to object to the proposed transfer or assignment. According to FINRA, customers are best positioned to determine whether to opt out if the letter advises them of:
 - The date by which they must respond if opting out;
 - How to opt out (*e.g.*, by telephone, email or another method); and
 - The alternatives available to the customer if opting out, including information regarding how the customer can effectuate a transfer to a different firm and the consequences of opting out without accomplishing a transfer to a different firm.
- **Fee Waivers and Disclosures.** Customers who do not opt out should not be charged for any transfer or assignment based on negative consent. In cases where customers opt out of the transfer or assignment and instead affirmatively move their accounts to a different member, either before or after the deadline to opt out, the delivering firm should waive any Automated Customer Account Transfer Service ("ACATS") fees associated with such customer-initiated transfers, irrespective of whether the transfer takes place before or after the opt-out deadline. Furthermore, customers who do not initially opt out of the transfer or assignment may nonetheless decide to move their accounts to a different member within a brief period after their accounts have been transferred or assigned to the receiving firm. In these instances, the receiving firm may consider waiving ACATS fees for a designated period (*e.g.*, 30 to 60 days) after the transfer or assignment, which would effectively afford customers additional time to determine whether to move their accounts to a different member without incurring any fees. According to FINRA, this is especially important for customers who receive less than 30 days' notice of the transfer or assignment due to urgent circumstances.
- **Delivery.** Members may choose from various delivery methods for sending negative consent letters, such as regular mail or, consistent with existing regulatory guidance, electronic delivery.

CONCLUSION

The Notice provides a framework for updating existing, or developing new, procedures related to the use of negative consent letters, while consolidating prior guidance on this important topic. In addition, FINRA has indicated openness to further input on relevant practices as part of its broader rule modernization efforts, signaling an opportunity for continued industry engagement.



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