

FINRA Proposes New Rules Governing Member Payments to Unregistered Broker-Dealers

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On December 2, 2009, the Financial Industry Regulatory Authority (“FINRA”) proposed for public comment new rules that would govern FINRA members’ ability to make payments to persons that are not associated with the member and persons subject to discipline or sanction.

The proposal would consolidate and codify certain existing rules and interpretations of the NASD and NYSE and create a general prohibition on transaction-based payments to persons that are not registered as broker-dealers with the Securities and Exchange Commission (“SEC”), but by reason of such payment would be required to register. Proposed FINRA Rule 2040 and a proposed amendment to FINRA Rule 8311 (together, the “Proposed Rules”) would replace several current rules relating to the permissibility of payments to non-members and eliminate certain exemptions currently in place, such as for payments to foreign finders and payments that would be permissible under the “cash solicitation rule” under the Investment Advisers Act of 1940 (the “Advisers Act”).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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