

Text of the Proposed Rule Change:¹

Rules of NYSE Arca, Inc.

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Rule 9.1(f). [Sharing Profits—Losses] Sharing in Accounts; Extent Permissible

[No registered employee shall directly or indirectly take or receive a share in the profits of any customer's account or share in any losses sustained in any such account.]

(1) (A) Except as provided in paragraph (2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if

(i) such person associated with a member obtains prior written authorization from the member employing the associated person;

(ii) such member or person associated with a member obtains prior written authorization from the customer; and

(iii) such member or person associated with a member shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of paragraph (1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if

¹ New text is underscored and deleted text is in brackets.

(A) such person associated with a member seeking such compensation obtains prior written authorization from the member employing the associated person;

(B) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.