

FINRA (and selected SEC) regulatory matters at a glance

What compliance officers need to know

FINRA notices, rule filings and guidance and selected SEC materials for June 2019

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Chart color key	Action may be required (does not include continuing education items)	Administrative	Arbitration	Continuing education	Notifications / Request for comment
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<u>This month's items of note</u>						
Securities Exchange Act Release (34-86031) June 5, 2019	Broker-Dealers Standards of Conduct	Regulation Best Interest: The Broker-Dealer Standard of Conduct	Regulation Best Interest	The Release approves Regulation Best Interest, which requires broker-dealers to (1) act in the best interest of their retail customer at the time a recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and (2) address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify	Compliance Date: June 30, 2020	Broker-Dealers that may be subject to Regulation Best Interest should begin to develop policies and procedures related to compliance therewith.

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				and fully and fairly disclose material facts about conflicts of interest, and, as required, to mitigate or, in certain instances, eliminate the conflict.		
<u>FINRA Regulatory Notices</u>						
New Regulatory Notices						
None. FINRA did not publish any Regulatory Notices in June.						
<u>Other FINRA Notices</u>						
New Notices						
None						
New Rule Filings						
FINRA Rule Filing 2019-017 (34-86257)	Research Reports Covered Investment Funds Quiet Period	Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 2210 (Communication with the Public) and 2241 (Research Analysts and Research Reports)	FINRA Rule 2210 (Communications with the Public) FINRA Rule 2241 (Communications with the Public)	The Proposal would conform the covered rules to the Fair Access to Investment Research Act (the "FAIR Act") by eliminating the "quiet period" restrictions in Rule 2241 on publishing a research report or making a public appearance concerning a covered investment fund and would create a filing exclusion under FINRA Rule 2210 for covered investment fund research reports.	Comment Due Date: 21 days from publication in the Federal Register	None. This Notice is informational only and for the purpose of soliciting comments.
FINRA Rule Filing 2019-014 (34-86178)	Transaction Reporting TRACE Treasuries Reporting	Order Approving Proposed Rule Change to Allow Additional Time for Reporting to TRACE of Transactions in U.S. Treasury Securities Executed	FINRA Rule 6730 (Transaction Reporting)	The Order amends FINRA Rule 6730 to give members additional time to report TRACE transactions in U.S. Treasury Securities executed to hedge a primary	Effective Date: To be announced by FINRA in a Regulatory	Members that transact in U.S. Treasury Securities may need to revise their processes and procedures to comply with the

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		to Hedge a Primary Market Transaction		market transaction and provides for a new modifier to identify such transactions.	Notice to be published no later than 90 days following a Commission approval, with the effective date no later than 270 days following such publication.	approved amendments.
FINRA Rule Filing 2019-012 (34-86091)	Underwriting	Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Amend FINRA Rule 5110 (Corporate Financing Rule - Underwriting Terms and Arrangements) to Make Substantive, Organizational and Terminology Changes	FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements)	The Notice proposes changes to FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements), which are based upon FINRA’s retrospective review of the rule.	Date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove, the proposed rule change: July 30, 2019	None. The filing merely extends the time available to the SEC to take action on the proposed rule.
<u>Exemptive and Interpretive Letters</u>						
New						
Interpretive Letter to Jonathan D. Wiley, The Forbes Securities Group (May 30, 2019)	Capital Acquisition Brokers Receipt of Compensation	Request for Interpretive Guidance Regarding the Receipt by a Capital Acquisition Broker of Compensation in the Form of Equity Securities	Capital Acquisition Broker Rules	A capital acquisition broker may accept equity securities issued by privately held companies as compensation for its services, provided the compensation is for services in which the broker is permitted to engage under the CAB	Immediately	The guidance applies generally.

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				Rules and the broker does not engage in prohibited activities.		
<u>Targeted Examination Letters</u>						
New						
None						
<u>Reports and Studies</u>						
New						
None						
<u>No Action Letters</u> of particular relevance to Broker-Dealers						
New						
None						
<u>Selected Enforcement and Litigation Actions</u>						
New						
SEC Press Release 2019-99 June 18, 2019	Enforcement ADRs Pre-Released ADRs	Investment Banks to Pay Multi-Million Dollar Amounts for Improper Handling of ADRs	Section 15(b)(4)(E) of the Securities Exchange Act of 1934 (Supervision)	The Press Releases stated that the settling entities improperly borrowed pre-release ADRs from other brokers when they should have known that those brokers did not own the underlying foreign shares needed to support those ADRs. the requisite foreign shares.	Immediately	None
SEC Press Release 2019-94 June 14, 2019						
<u>Other matters of interest including OCIE materials and other SEC <u>press releases</u> and FINRA <u>press releases</u></u>						
New						

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
Securities Exchange Act Release (34-86175) June 21, 2019	Security-Based Swaps Net Capital Margin Segregation Requirements	Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers	Various	The Release adopts: <ul style="list-style-type: none"> a) capital and margin requirements for security-based swap dealers (“SBSD” and major security-based swap participants (MSBSP”); b) segregation requirements for SBSDs; c) notification requirements with respect to segregation for SBSDs and MSBSPs; d) amendments increasing the minimum net capital requirements for broker-dealers authorized to use internal models to compute net capital; and e) prescribed capital and segregation requirements for broker-dealers that engage in security-based swap and swap activities but are not SBSDs. 	Effective Date: 60 days after publication in the Federal Reserve	Entities covered by the release may want to begin revising their policies and procedures accordingly.

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Securities Exchange Act Release (34-86073) June 10, 2019	Financial Reporting Annual Reports Accountant's Report Exemption	Amendment to Single Issuer Exemption for Broker-Dealers	Rule 17a-5 (Reports to be made by Certain Brokers and Dealers)	The Release approves amendments to Rule 17a-5 that are intended to clarify that the exemption from the requirement in Paragraph (e)(1)(i)(A) of Rule 17a-5, which requires a broker-dealer to include with its annual financial reports, a report prepared by an independent public account, applies to broker-dealers that limit their activities to acting as broker for a single issuer in soliciting subscriptions for securities of the issuer.	Immediately	Broker-Dealers that rely on this exemption may want to confirm that they continue to meet the exemption consistent with the approving release.
Securities Exchange Act Release (34-86031) June 5, 2019	Broker-Dealers Standards of Conduct	Regulation Best Interest: The Broker-Dealer Standard of Conduct	Regulation Best Interest	The Release approves Regulation Best Interest, which requires broker-dealers to (1) act in the best interest of their retail customer at the time a recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and (2) address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and, as required, to mitigate or, in certain instances, eliminate the conflict.	Compliance Date: June 30, 2020	Broker-Dealers that may be subject to Regulation Best Interest should begin to develop policies and procedures related to compliance therewith.

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Investment Advisers Act Release IA-5248 (June 5, 2019)	Investment Advisers Standard of Conduct	Commission Interpretation Regarding Standard of Conduct for Investment Advisers	Various	The Release discusses the fiduciary duty of advisers and, in particular, their duty of loyalty and duties to provide advice that is in the best interest of their clients, to seek best execution and to provide advice and monitoring over the course of an adviser's relationship with its client. It also 'While the Release is applicable to investment advisers, and not, strictly speaking, to broker-dealers, much of the guidance provided therein relevant to their obligations to retail customers.	Immediately	Retail broker-dealers may find the provided guidance relevant to their obligations to retail customers.
Investment Advisers Act Release IA-5249 (June 5, 2019)	Investment Adviser Registration Broker-Dealer Exemption Solely Incidental	Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser	Section 202(a)(11)(C) of the Investment Advisers Act of 1940	The Release is intended to "confirm and clarify" the Commission's position with respect to the "solely incidental" prong of the broker-dealer exemption from the investment adviser definition. While the Release does not break any new ground, it does provide a useful historical overview of the applicable provision.	Immediately	Broker-Dealers that rely on the solely incidental prong, may want to review the Release to ensure that their use thereof is appropriate.
SEC Press Release 2019-85 June 3, 2019	Customer Protection Sales Practices Teachers Military Service Members	SEC Announces Enforcement and Investor Education Initiatives to Protect Teachers and Military Service Members	Various	The press releases announces initiatives to protect teachers and military service members from securities fraud and other misconduct.	Immediately	In light of the initiatives, retail broker-dealers may want to pay particular attention to their handling of accounts for teachers and military service members.

Information about this chart

The information set forth herein is for general informational purposes only and is not meant as a full analysis of any particular matter and should not be relied upon as legal advice regarding any factual situation.

About Glen Barrentine

Glen Barrentine has extensive experience involving regulatory, compliance and enforcement issues affecting financial service companies, particularly broker-dealers, investment advisers, municipal advisors, and securities exchanges. Glen frequently represents and advises clients in connection with SEC and FINRA enforcement proceedings and other regulatory inquiries, such as inspections and examinations, as well as on transactions involving the purchase, sale or restructuring of financial service companies. Glen also provides clients with counseling and advice across the full range of regulatory and compliance issues arising under the rule sets issued by the SEC, FinCEN, FINRA and the various securities exchanges, e.g., the NYSE.

Particular areas of focus include insider trading, registration and membership, anti-money laundering, broker-dealer net capital requirements, sales practices, research, trading and trade reporting, Rule 15a-6 and cross boarder activities by foreign broker-dealers, pay to play restrictions, supervision, and soft dollars. Other areas of focus include the preparation of supervisory and compliance procedures and drafting and negotiating clearing, account, prime brokerage, and other industry agreements.

Glen was previously a member of the Board of Directors of the National Society of Compliance Professionals (NSCP), the largest organization in the U.S. devoted exclusively to compliance in the financial services industries. He also currently hosts NSCP's monthly Broker-Dealer Forum and previously chaired the NSCP's Governance and Investment Advisers Committees.

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