

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 August 2019

By Glen Barrentine

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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>						
FINRA Regulatory Notice <u>19-28</u>	Municipal Advisor Registration Supervision	Municipal Advisors: Guidance Regarding Member Firms' Supervisory Obligations when Participating in Investment-Related Activities with Municipal Clients	<u>FINRA Rule 3110</u> (Supervision) <u>FINRA Rule 3120</u> (Supervisory Control System)	The Notice reminds member firms that engage in investment-related activities with municipal clients, including so-called "obligated persons," of the need to either register as an a municipal advisor or have procedures in place to ensure that	Immediately	This Notice is informational only and for the purpose of providing guidance, members that engage in investment –related activities with municipal clients may want to review their policies and procedures in light

* Other rules may also apply

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				<p>such dealings do not trigger registration requirements. A possible trigger includes recommending investment strategies relating to the proceeds of municipal securities or brokering municipal escrow investments. Firms that engage in investment-related activities with municipal clients but do not intend to register as municipal advisors should have appropriate procedures to protect against engaging in activities that may trigger registration. For example, a firm may want to have procedures to block such clients entirely or to prohibit the making of recommendations to such clients.</p> <p>The Notice also provides an overview of the various exemptions from registration as provided by rule.</p>		of the Notice's guidance.

FINRA Regulatory Notices

New Regulatory Notices

FINRA Regulatory Notice <u>19-28</u>	Municipal Advisor Registration Supervision	Municipal Advisors: Guidance Regarding Member Firms' Supervisory Obligations when Participating in Investment-Related	<u>FINRA Rule 3110</u> (Supervision) <u>FINRA Rule 3120</u> (Supervisory Control System)	The Notice reminds member firms that engage in investment-related activities with municipal clients, including so-called "obligated persons," of the need to either	Immediately	This Notice is informational only and for the purpose of providing guidance, members that engage in investment-related activities with
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		Activities with Municipal Clients		<p>register as an a municipal advisor or have procedures in place to ensure that such dealings do not trigger registration requirements. A possible trigger includes recommending investment strategies relating to the proceeds of municipal securities or brokering municipal escrow investments. Firms that engage in investment-related activities with municipal clients but do not intend to register as municipal advisors should have appropriate procedures to protect against engaging in activities that may trigger registration. For example, a firm may want to have procedures to block such clients entirely or to prohibit the making of recommendations to such clients.</p> <p>The Notice also provides an overview of the various exemptions from registration as provided by rule.</p>		municipal clients may want to review their policies and procedures in light of the Notice's guidance.
FINRA Regulatory Notice 19-27	Senior Investors	Retrospective Rule Review: FINRA Requests Comment on Rules and Issues Relating to Senior Investors	Various, including: FINRA Rule 2165 (Financial Exploitation of Specified Adults)	The Notice announces that FINRA is assessing the effectiveness of its rules to protect senior investors from financial exploitation	Comment Period Expiration Date: October 8, 2019	None This Notice is informational only and for the purpose of soliciting comments in connection with

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			FINRA Rule 4512 (Customer Account Information)	and is interested in whether additional tools, guidance or changes to FINRA rules and administrative process are appropriate to further address financial exploitation of senior investors.		the retrospective rule review.
FINRA Regulatory Notice 19-26	Sales Practices Regulation Best Interest Form CRS (Relationship Summary Form) Retail Investors	Regulation Best Interest: SEC Adopts Best Interest Standard of Conduct	SEA Rule 151-1 (Regulation Best Interest) SEA Rule 17a-14 (Form CRS, for preparation, filing and delivery of Form CRS)	The Notice provides the email address for questions to the SEC regarding Rule BI and Form CRS (IABDQuestions@SEC.gov) and announces a FINRA web page that is intended as a source of information for FINRA members on such rules.	Immediately	The Notice does not impose any new obligations on member firms.

Other FINRA Notices

None

FINRA Rule Filings

FINRA Rule Filing 2019-017 (34-86700)	Communications Research Analysts and Research Report	Order Approving a Proposed Rule Change to Amend FINRA Rule 2210 (Communications with the Public) and 2241 (Research Analysts and Research Reports)	FINRA Rule 2210 (Communications with the Public) FINRA Rule 2241 (Research Analysts and research Reports)	The amendments 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.	Immediately	Members wishing to take advantage of the elimination of the amendments may want to revise their policies and procedures accordingly.
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
FINRA Rule Filing 2019-022 (34-86558)	Initial Public Offerings New issues Distributions Allocations	Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and FINRA Rule 5131 (New Issue Allocations and Distributions)	FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) FINRA Rule 5131 (New Issue Allocations and Distributions)	The proposed amendments would make a host of mostly minor changes to the coverage of these rules. These include changes to the persons exempt from the rules, modifications to current exemptions and additions to add exemptions for certain types of offerings.	Comment Period Expiration Date: August 29, 2019	None This Notice is informational only and for the purpose of soliciting comments in connection with the retrospective rule review.

SEC Rule Filings

None

Exemptive and Interpretive Letters

None

Targeted Examination Letters

None

Reports and Studies

None

No Action Letters of particular relevance to Broker-Dealers

Letter to Giovanni Prezioso, Cleary Gottlieb Steen & Hamilton (Aug. 28, 2019)	Confirms	Request for Exemption from Rule 10b-10	SEA Rule 10b-10	In lieu of trade-by-trade confirmations and subject to applicable representations, the letter allows the broker to provide institutional accounts with a single end-of-day confirmation reflecting aggregated execution information for same-side order executions.	Immediately	None
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Selected Enforcement and Litigation Actions

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
SEC Press Release 2019-159 August 21, 2019	Enforcement Failure to Supervise Valuation	SEC Charges Broker-Dealer and CEO with Supervision Failures Related to Hedge Fund Valuation Scheme	<u>Section 15(b)(4)(E)</u> of the Securities Exchange Act of 1934 (Supervision)	<p>The enforcement actions against the firm and the CEO pertain to a failure to supervise a broker who provided inflated price quotes to a hedge fund in response for promises of order flow. The order states that while the broker-dealer and its CEO, who was the broker's direct supervisory, knew that the broker was providing price quotes to at least one customer, the firm failed to establish adequate policies and procedures with respect thereto.</p> <p>In addition, even after the broker entered into an agreement with the SEC to refrain from association with any broker-dealer and even though the firm filed a Form U5 with respect to the broker, it appears that the broker continued to work out of the firm's offices and have contact with the hedge fund and its traders, which included the continued provision of inflated quotes and the solicitation of trades from the hedge fund.</p> <p>The SEC's actions against the firm and the firm's CEO are in addition to a criminal</p>	Immediately	None

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				action against the broker.		
SEC Press Release 2019-151 August 21, 2019	Enforcement Fingerprint Screening	SEC Charges Broker-Dealer with Violations of Gatekeeping Provisions Aimed at Protecting Investors	<u>SEA Rule 15c2-11</u> (Initiation or Resumption of Quotations Without Specific Information)	Subject to certain exceptions, SEA Rule 15c2-11 applies where a broker-dealer is initiating or resuming the publication or submission of quotations with respect to a non-listed OTC security. Rule 15c2-11 requires that the broker obtain, review and preserve certain, extensive, information regarding the security and have a reasonable basis for believing that the issuer information is accurate in all material respects and was obtained from a reliable source. Before initiating quotations, a broker subject to Rule 15c2-11 must also make a filing with FINRA under FINRA Rule 6432. Rule 15c2-11 is intended to minimize the risk of fraud with respect to the sale of such securities.	Immediately	None

Other matters of interest including OCIE materials and other SEC press releases, SEC public statements, and FINRA press releases

None

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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.

Prepared by Glen Barrentine, glenbarrentine@nortonrosefulbright.com or find me on [LinkedIn](#). Please contact me if you have questions or suggestions, would like additional information added, or want to be included on the distribution list.

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 US 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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