

# 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 September 2019

By Glen Barrentine

### Internal links

<b><u>Items of Note</u></b>	<b><u>FINRA Regulatory Notices</u></b>	<b><u>Other FINRA Notices</u></b>
<b><u>FINRA Rule Filings</u></b>	<b><u>SEC Rule Filings</u></b>	<b><u>FINRA Guidance</u></b>
<b><u>No Action Letters</u></b>	<b><u>Selected Enforcement and Litigation</u></b>	<b><u>Other matters of interest</u></b>

<b>Chart color key</b>	<b>Action may be required (does not include continuing education items)</b>	<b>Administrative</b>	<b>Arbitration</b>	<b>Continuing education</b>	<b>Notifications / Request for comment</b>
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<b><u>This month's items of note</u></b>						
FINRA Regulatory Notice <a href="#">19-31</a>	Advertising and Public Communications Electronic Media Innovative Design Techniques Disclosures	ADVERTISING REGULATION: Disclosure Innovations in Advertising and Other Communications with the Public	Various FINRA Rules in the <a href="#">2200 Series of Rules</a> relating to Communications and Disclosures	The Notice provides guidance on member's use of "innovative design techniques in communicating with the public and, in particular, on the use of disclosures. The offered guidance encourages the use of shorter, more relevant that the use of extensive	Immediately	This Notice is informational only and for the purpose of providing guidance. Nevertheless, members that engage in marketing to and communications with the public may want to

\* Other rules may also apply

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				disclosures presented in footnotes or disclaimer blocks.		review their practices, policies and procedures in light of the Notice's guidance.
<b><u>FINRA Regulatory Notices</u></b>						
<b>New Regulatory Notices</b>						
FINRA Regulatory Notice <u>19-32</u>	Communications Research Analysts and Research Report	FINRA Amends Rule 2210 and 2241 to Conform to the Fair Access to Investment Research Act of 2017	<u>FINRA Rule 2210</u> (Communications with the Public)  <u>FINRA Rule 2241</u> (Research Analysts and research Reports)	The Notice discusses recently approved amendments to 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.	Implementation Date: August 16, 2019	Members wishing to take advantage of the elimination of the amendments may want to revise their policies and procedures accordingly.
FINRA Regulatory Notice <u>19-31</u>	Advertising and Public Communications Electronic Media Innovative Design Techniques Disclosures	ADVERTISING REGULATION: Disclosure Innovations in Advertising and Other Communications with the Public	Various FINRA Rules in the <u>2200 Series of Rules</u> relating to Communications and Disclosures	The Notice provides guidance on member's use of "innovative design techniques in communicating with the public and, in particular, on the use of disclosures. The offered guidance encourages the use of shorter, more relevant that the use of extensive disclosures presented in footnotes or disclaimer blocks.	Immediately	This Notice is informational only and for the purpose of providing guidance. Nevertheless, members that engage in marketing to and communications with the public may want to review their practices, policies and procedures in light of the

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						Notice's guidance.
FINRA Regulatory Notice <u>19-30</u>	Transaction Reporting TRACE U.S. Treasury Securities	TRACE REPORTING OF TRANSACTIONS IN U.S. TREASURY SECURITIES: SEC Approves Amendments Relating to Transactions in U.S. Treasury Securities Executed to Hedge a Primary market Transaction	<u>FINRA Rule 6730</u> (Transaction Reporting)	The Notice announces the SEC's approval of amendments to <u>FINRA Rule 6730</u> to give members additional time to report TRACE transactions in U.S. Treasury Securities executed to hedge a primary market transaction and provides for a new modifier to identify such transactions.	Effective Date: June 1, 2020	Members that transact in U.S. Treasury Securities may need to revise their processes and procedures to comply with the approved amendments.
FINRA Regulatory Notice <u>19-29</u>	Published Trade Data OTC Equity Trading Volume	OTC EQUITY TRADING VOLUME: SEC Approves Amendments to Expand Published Data Relating to OTC Equity Trading Volume	<u>FINRA Rule 6110</u> (Trading Otherwise than on an Exchange) <u>FINRA Rule 6610</u> (General)	The Notice announces the approval by the SEC of rules changes that will expand the non-ATS data that FINRA publishes in two respects. First, FINRA will eliminate the <i>de minimis</i> exception and publish on an attributed basis each firm's aggregate non-ATS volume (number of trades and number of shares) on a weekly or monthly basis, as applicable. Second, FINRA will begin publishing new monthly aggregate non-ATS block-size trading data for all NMS stocks on the same terms as current ATS block-size data, that is on a one-month delayed basis broken down by firm but not issuer.	Effective Date: November 4, 2019	The Notice does not impose any new obligations on member firms.

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<u>Other FINRA Notices</u>						

None

**FINRA Rule Filings**

FINRA Rule Filing 2019-023 <a href="#">(34-87078)</a>	Trading NMS  Circuit Breakers	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period Related to FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks)	<u>FINRA Rule 6121.02</u> (Market-Wide Circuit Breakers in NMS Stocks)	The Notice extends the pilot period related to <u>FINRA Rule 6121.02</u> (Market-Wide Circuit Breakers in NMS Stocks) to October 19, 2020.	Pilot Extension Date:  October 19, 2020	None. The Notice merely extends an existing pilot period for an additional year.
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**SEC Rule Filings**

Securities Exchange Act Release <a href="#">(34-87115)</a>  September 25, 2019	Trading OTC Quotes	Publication or Submission of Quotations Without Specified Information	<u>SEA Rule 15c2-11</u> (Initiation or Resumption of Quotations without Specific Information)	The Release proposes amendments to the rule governing the publication of quotations for securities in a quotation medium other than a national securities exchange.	Comment Due Date:  60 days after publication in the Federal Register	None. The release is for the purpose of soliciting comments on proposed amendments.
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Securities Exchange Act Release <a href="#">(34-87005)</a>  September 19, 2019	Swaps Reporting Recordkeeping	Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers	Various	The Release adopts additional recordkeeping requirements that are applicable to broker-dealers that engage in security-based swap and swap activities.	Effective Date: 60 days after publication in the Federal Register.  Compliance Dates: 18 months after the effective date of any final rules originally proposed in May 2019 addressing the cross-border application of certain	Brokerage firms that are not security-based swap dealers or major security-based swap participants but do engage in swap or security-based swap activities will need to comply with the newly approved rules on and after the compliance date.
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					security-based swap requirements.	
Securities Exchange Act Release <a href="#">(34-86901)</a> September 9, 2019	Consolidated Audit Trail (CAT) Transparency	Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail	<u>CAT NMS Plan</u>	<p>The Release describes amendments to the <u>CAT NMS Plan</u> that are proposed by the SEC pursuant to its authority under Rule 608 of Regulation NMS. The proposed amendments are for the purpose of imposing public transparency requirements on the SROs that are participants in CAT. The amendments would require that the participants file an implementation plan and quarterly progress reports with the SEC.</p> <p>See also, <u>SEC Press Release 2019-173: SEC Proposes Transparency and Financial Accountability Amendments to the CAT NMS Plan.</u></p>	Comment Due Date: October 28, 2019	None. The release is for the purpose of soliciting comments on the amendments proposed therein.

**FINRA Guidance**

**None**

**No Action Letters of particular relevance to Broker-Dealers**

**None**

**Selected Enforcement and Litigation Actions**

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SEC Press Release <a href="#">2019-187</a> September 24, 2019	Enforcement Confidential Customer Information Disclosure of Confidential Counterparty Information	SEC Charges Operator of an ATS with Failing to Protect Confidential Subscriber Information	<u>Rules 301(b)(10) and 301(b)(2) of Regulation ATS</u> (Requirements for Alternative Trading Systems)	The complaints alleges that the ATS disclosed the identifies of certain firms seeking to trade bonds on the ATS to potential counterparties notwithstanding that the ATS publicly touted its anonymous trading platform. The ATS paid a penalty of \$2.1 million.	Immediately	None
SEC Press Release <a href="#">2019-178</a> September 17, 2019	Enforcement Fees Advisory Fees Excess Commissions on UITs	Firm Agrees to Pay \$15 Million for Improperly Charging Retail Investors	Various	The complaint alleges that the firm had no reasonable basis for recommending that certain brokerage customers sell UIT positons prior to their maturity dates and then repurchase newly-issued UIT positions and failed to disclose conflicts related to recommending UITs by recommending the UITs without applying applicable sales-load discounts to accounts in which the brokers received greater compensation.	Immediately	None

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SEC Press Release <a href="#">2019-177</a> September 16, 2019	Enforcement Books and Records Blue Sheet Submission Inaccurate Records Trade Compression	Two Broker-Dealers to Pay \$4.65 Million in Penalties for Providing Deficient Blue Sheet Data	<u>SEA Rule 17a-4(j)</u> (Records to be preserved by certain exchange members, brokers and dealers)  <u>SEA Rule 17a-25</u> (Electronic submission of securities transaction information by exchange members, brokers, and dealers)	The complaints allege a failure to provide complete and accurate blue sheet records to the SEC.  As to one firm, the violation primarily resulted from the firm's utilization of "trade compression" which lead to the improper reporting of multiple transactions as a single transaction.  The complaints also stated that the firms lacked processes for validating the accuracy of the reported information and did not conduct adequate periodic sampling or manual validation.	Immediately	None
FINRA News Release <a href="#">September 16, 2019</a>	Form U5 Amendments Inaccurate or Incomplete	FINRA FINES Firm \$1.1 Million for Failing to Timely Disclose 89 Allegations of Misconduct over a Six-Year Period	<u>Article V, Section 3(a)</u> of FINRA's By-Laws  <u>FINRA Rule 1122</u> (Filing of Misleading Information as to Membership or Registration)	The firm failed to disclose or timely disclose 89 internal reviews or allegations of misconduct by its registered representatives and associated persons. Where late filings were made they were made, on average, two years late.	Immediately	None

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FINRA CASE ID: <a href="#">2017055723501</a>	Form U4 Timely Amendments Supervisory Control Reports	AWC re: Former Chief Compliance Officer and General Securities Principal	<u>Article V, Section 2</u> of FINRA's By-Laws  <u>FINRA Rule 1122</u> (Filing of Misleading Information as to Membership or Registration)  <u>FINRA Rule 3120</u> (Supervisory Control System)	The Respondent failed to timely update Form U4s relating to 18 registered representatives involving 58 reportable judgements and liens of which FINRA informed her in writing. She also failed to prepare supervisory control reports for the years 2014 and 2015.  Respondent agreed to a four month suspension, a fine of \$20,000 and a requirement to requalify as a general securities principal prior to acting in that capacity with any FINRA member.	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.

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## 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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