

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 October 2019

By Glen Barrentine

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<u>Items of Note</u>	<u>FINRA Regulatory Notices</u>	<u>Other FINRA Notices</u>
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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>						
Information Notice <u>10/2/19</u>	Cybersecurity	Cybersecurity Alert: Cloud-Based Email Account Takeovers	<u>Regulation SP</u>	The Notice warns firms that several member firms have recently notified FINRA that they have experienced email account takeovers (ATOs) while using cloud-based email platforms. The Notice describes techniques used in the attacks while also providing	Immediately	Firms are advised to compare their own practices with those described in the Notice.

* Other rules may also apply

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				advice for preventing and responding to ATOs.		
FINRA Regulatory Notices						
FINRA Regulatory Notice 19-35	Fees Registration Renewals	BD AND IA RENEWALS FOR 2020: Broker-Dealers, Investment Adviser Firms, Agents and Investment Adviser Representatives, and Branch Renewals for 2020	Not Applicable	This Notice is provided to help firms review, reconcile and respond to their FINAL Renewal Statements and reports currently in E-Bill and view the reports available in Web CRD/IARD for the annual registration renewal process.	Payment Deadline for Preliminary Statements: December 16, 2019	Members should comply with the December 16, 2019 payment deadline for preliminary statements.
FINRA Regulatory Notice 19-34	Supervision Annual Compliance Meeting	ANNUAL COMPLIANCE MEETINGS: Retrospective Rule Review Report and Guidance	FINRA Rule 3110 (Supervision)	The Notice announces that after conducting a retrospective review of the annual compliance meeting requirements in Rule 3110(a)(7) FINRA has determined to maintain the requirement without change. The Notice summarizes the review process and provides clarifying guidance regarding the conduct of the annual compliance meetings.	Effective Date: Immediately	None. While the underlying rule is unchanged, members may want to consider the guidance offered by the Notice .
FINRA Regulatory Notice	Blue Sheets	ELECTRONIC BLUE SHEET SUBMISSIONS: FINRA and ISG Announce the	FINRA Rule 8211 (Automated Submission of Trading Data	The Notice sets forth updates to data elements for electronic blue	Effective Date: Immediately	Firms that respond to blue sheet requests will need to

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<u>19-33</u>		Update of Blue Sheet Data Elements	Requested by FINRA) <u>FINRA Rule 8213</u> (Automated Submission of Trading Data for No-Exchange-Listed Securities Requested by FINRA)	sheeting. applicable.		take account of the updated data elements.
<u>Other FINRA Notices</u>						
Information Notice <u>10/2/19</u>	Cybersecurity	Cybersecurity Alert: Cloud-Based Email Account Takeovers	<u>Regulation SP</u>	The Notice warns firms that several member firms have recently notified FINRA that they have experienced email account takeovers (ATOs) while using cloud-based email platforms. The Notice describes techniques used in the attacks while also providing advice for preventing and responding to ATOs.	Immediately	Firms are advised to compare their own practices with those described in the Notice.
<u>FINRA Rule Filings</u>						
FINRA Rule Filing 2019-012 (34-87407)	Underwriting	Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements)	<u>FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements)</u>	The Notice proposes changes to <u>FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements)</u> , 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:	None. The filing merely extends the time available to the SEC to take action on the proposed rule.

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		to Make Substantive, Organizational and Terminology Changes, as Modified by Partial Amendment No. 1			December 27, 2019	
FINRA Rule Filing 2019-025 (34-87344)	Trading Exchange-Listed Securities Clearly Erroneous Transactions	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)	FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)	The filing extends an existing pilot relating to clearly erroneous transactions in exchange-listed securities for an additional six months.	Pilot Extension Date: April 20, 2020.	None. The filing extends an existing pilot for approximately six additional months.
FINRA Rule Filing 2019-008 (34-87232)	TRACE Reporting Data Elements Corporate Debt Securities	Notice of Filing of Amendment No. 2 to a Proposed Rule Change to Establish a Corporate Bond New Issue Reference Data Service and Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Establish a Corporate Bond New Issue Reference Data Service	FINRA Rule 6760 (Obligation to Provide Notice)	The proposal would establish a new issue data service that would contain specified data elements on TRACE-eligible corporate bond issues. As a result, underwriters would be required to report certain new data elements for new issues in corporate debt securities.	Date by which the SEC shall either approve or disapprove the proposal: December 4, 2019	None. The filing provides additional time to the SEC to take action on the underlying proposal.
FINRA Rule Filing 2019-024 (34-87205)	Fees Trade Reporting	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend	FINRA Rule 7620B (FINRA/NYSE Trade Reporting)	The Notice announces modifications to the the trade reporting fees applicable to	Effective Date: Immediately	None

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	FINRA/NYSE Trade Reporting Facility	FINRA Rule 7620B to Modify the Trade Reporting Fees Applicable to Participants that Use the FINRA/NYSE Trade Reporting Facility	Faculty Reporting Fees)	participants that use the FINRA/NYSE trade reporting facility.		
<u>SEC Rule Filings</u>						
Securities Exchange Act Release (34-87193) October 1, 2019	Fees NMS Plan Fee Amendments	Rescission of Effective-Upon-Filing Procedures for NMS Plan Fee Amendments	Regulation NMS <u>Rule 608</u> (Filing and Amendments of National Market System Plans	The Proposal would rescind a provision of Regulation NMS that allows a proposed fee amendment to a national market system plan to become effective upon filing.	Comment Due Date: December 10, 2019	None. The release is for the purpose of soliciting comments on proposed amendments.
<u>FINRA Guidance</u>						
<u>Podcast</u> October 15, 2019	Sales Practices Regulation Best Interest	Regulation Best Interest: Preparing for a New Standard of Conduct	Regulation Best Interest (17 CFR 240.151-1)	FINRA's General Counsel, Robert Colby provides an overview of Regulation BI and the steps FINRA firms will need to take to prepare for its implementation.	Compliance Date: Firms must comply with Regulation BI by June 30 2020	Members who are subject to Regulation BI may find the podcast of value.
FINRA News Release <u>October 8, 2019</u>	Sales Practices Regulation Best Interest	FINRA Provides New Reg. BI and Form CRS Resources to Assist Member Firms in Complying with SEC Rules by June 30, 2020	Regulation Best Interest (17 CFR 240.151-1)	FINRA's news release announces that FINRA is providing a new Reg BI and FORM CRS Checklist, which are available on FINRA's <u>Reg BI webpage</u> .	Compliance Date: Firms must comply with Regulation BI by June 30 2020	Members who are subject to Regulation BI may find the Checklist and Form CRS of value.
<u>No Action Letters</u> of particular relevance to Broker-Dealers						

None

Selected Enforcement and Litigation Actions

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
SEC Press Release 2019-214 October 15, 2019	Enforcement Failure to Supervise ADRs Pre-release	Supervisor Charged for Role in Brokerage Firm's Improper Handling of ADRs	<u>Exchange Act</u> Section 15(b)(4)(E)	The Order states that the brokerage firm's securities lending personnel "routinely obtained pre-release ADRs without taking any steps to comply with the Pre-Release Obligations". The Order further states that the supervisor "was not aware of anyone at [the firm] confirming whether counterparties complied with the Pre-Release Obligations. Nor was he aware of any other procedures at [the firm] addressing compliance with the Pre-Release Agreements."	Immediately	None
SEC Press Release 2019-205 October 2, 2019	Enforcement Trading Manipulation Layering Cross-Market Manipulation	SEC Obtains Final Judgement Against Brokerage Firm and CEO in Layering, Manipulation Case.	Various	The SEC's complaint alleged that the brokerage firm and its CEO helped facilitate the customer's manipulative trading.	Immediately	None

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
FINRA News Release <u>October 24, 2019</u>	Enforcement Anti-Money Laundering Wire Transfers Penny Stocks SARs	FINRA Fines Related Firms \$15 Million for AML Program and Supervisory Failures	Various	<p>The news release highlights that the firms' AML program did not include any surveillance targeting potentially suspicious penny stock transactions until 2016 and did not develop and implement a written AML program that could be expected to detect and cause the reporting of potentially suspicious transactions until March 2017.</p> <p>The release also highlights a failure to review wire transfers conducted in foreign currencies and a further failure to review U.S. dollar denominated transfers to determine whether they involved high-risk entities or jurisdictions.</p> <p>The news release also notes that the firms' AML programs were understaffed notwithstanding that firm personnel identified and escalated concerns regarding staffing and other matters fully three years prior to effective action being taken.</p>	Immediately	None

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FINRA News Release <u>October 2, 2019</u>	Enforcement Municipal Securities Substitute Interest/Short Positions Reporting and Tax Liabilities	FINRA Fines Firm \$2 Million for Continued Failures Relating to Short Positions in Municipal Securities	Various	When a FINRA member is short municipal securities purchased by customers, the firm rather than the issuing municipality is the source of the interest payments, which is therefore subject to taxes. The firm inaccurately represented positions on customer account statements and Forms 1099 as tax exempt.	Immediately	None
Other matters of interest including <u>OCIE materials</u> and other SEC <u>press releases</u> , <u>SEC public statements</u> , and FINRA <u>press releases</u>						
FINRA News Release <u>October 16, 2019</u>	Examination Findings	FINRA Publishes 2019 Report on Examination Findings and Observations	None	The Report provides a summary of key findings and observations from examinations.	Not relevant	None though member firms may find the information useful to their compliance planning.
FINRA News Release <u>October 2, 2019</u>	Brokerage Industry	FINRA Publishes 2019 Industry Snapshot	None	The snapshot provides a statistical report on brokerage firms, registered representatives and market activity regulated by FINRA.	Not relevant	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.

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 currently hosts NSCP's monthly Broker-Dealer Forum and previously chaired the NSCP's Governance Committee and Investment Advisers Forum.

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