

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 December 2019

By Glen Barrentine

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

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 item(s) of note</u>						
FINRA News Release (<u>December 12, 2019</u>)	Examinations and Risk Monitoring Senior Management	FINRA Announces Senior Leadership Team under New Examination and Risk Monitoring Program Structure	Not Applicable	The News Release announces FINRA's new, unified examination and risk monitoring program's senior management and that member firms will be grouped into one of five business models for examination purposes.	FINRA expects to inform each member firm shortly of its new risk monitoring team, including the name of the individual with the ultimate responsibility for the firm with respect to ongoing monitoring, risk	While these changes will undoubtedly impact member firms, the changes do not require member firms to take any steps or otherwise make changes to their operations.

* Other rules may also apply

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					assessment, planning and scoping of examinations.	
Securities Exchange Act Release (34-87784) December 18, 2019	Private Placements Regulation D Accredited Investors	Amending the “Accredited Investor” Definition	Rule 501 of Regulation D (17 CFR 230.501)	The Release proposes changes to the “Accredited Investor” Definition.	Comment due date: 60 days from publication in the Federal Register.	None. The notice is for the purpose of soliciting comments on the proposed amendments.
<u>FINRA Regulatory Notices</u>						
FINRA Regulatory Notice 19-37	Equity Initial Public Offerings New issues Distributions Allocations	Initial Public Offering (IPO) Rules. SEC Approves Amendments to FINRA Rule 5130 and 5131 Relating to Equity IPOs	FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) FINRA Rule 5131 (New Issue Allocations and Distributions)	As approved, the amendments 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.	Effective Date: January 1, 2020	Member firms that engage in equity underwriting should review their procedures and process related to the referenced rules in light of the approved amendments.
<u>Other FINRA Notices</u>						
Information Notice 12/9/19	Margin - Extension of Time Possession or Control - Extension of Time	2020 Holiday Margin Extension Schedule	Regulation T Rule 220.4 (Margin Account) Regulation T Rule 220.8 (Cash Account) SEA Rule 15c3-3 (Customer Protection – Reserves and Custody of Securities)	The Notice sets forth the due dates for filings of extensions of time under the margin rules and SEA Rule 15c3-3 prior to an after holidays when banks or exchanges are closed.	Immediately	Firms that carry customer accounts and/or extend margin are advised to make note of the referenced due dates.

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			<u>FINRA Rule 4210</u> (Margin Requirements) <u>FINRA Rule 4230</u> (Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3-3)			
<u>FINRA Rule Filings</u>						
FINRA Rule Filing 2019-012 (34-87855)	Underwriting	Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change to Amend FINRA Rule 5110 (Corporate Financing Rule - Underwriting Terms and Arrangements) to Make Substantive, Organizational and Terminology Changes, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2	<u>FINRA Rule 5110</u> (Corporate Financing Rule – Underwriting Terms and Arrangements)	The Order approves changes to <u>FINRA Rule 5110</u> (Corporate Financing Rule – Underwriting Terms and Arrangements), which are based upon FINRA’s retrospective review of the rule.	Effective Date: To be announced	Firms involved in underwriting should consider the need to update their procedure.
FINRA Rule Filing 2019-028 (34-87837)	TRACE-Eligible Securities US Treasuries Dissemination of Transaction Information	Order Approving Proposed Rule Change to Allow FINRA to Publish or Distribute Aggregate Transaction Information and Statistics on US Treasury Securities	<u>FINRA Rule 6750</u> (Dissemination of Transaction Information)	The Order approves amendments to <u>FINRA Rule 6750</u> to provide FINRA with authority to distribute aggregate transaction information and statistics on US Treasury securities.	Effective Date: To be announced	None

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FINRA Rule Filing 2019-030 (34-87810)	Membership Application Arbitration Claims Outstanding	Notice of Filing of a Proposed Rule Change to Amend the Membership Application Program (“MAP”) Rules to Address the Issue of Pending Arbitration Claims	<u>FINRA 1014</u> (Department Decision) <u>FINRA 1017</u> (Application for Approval of Change in Ownership, Control, or Business Operations)	The Proposal would amend FINRA Rule 1014 and 1017 to better address pending arbitration claims against members and their associated persons.	Comment due date: 21 days from publication in the Federal Register.	None. The notice is for the purpose of soliciting comments on the proposed amendments.
FINRA Rule Filing 2019-029 (34-87725)	OTC Trade Reporting Trade Reporting Facility FINRA/Nasdaq	Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Securities Transacting Credits Applicable to FINRA/Nasdaq TRF Participants	<u>FINRA 7610A</u> (Securities Transaction Credit)	The Proposal modifies the securities transaction credits, which is a form of revenue sharing, that apply to FINRA members that utilize the FINRA/Nasdaq Trade Reporting Facilities.	Operative Date: January 1, 2020	None.
FINRA Rule Filing 2019-008 (34-87656)	TRACE-Eligible Securities Corporate Debt Securities New Issues Data Service	Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Establish a Corporate Bond New Issue Reference Data Service	<u>FINRA Rule 6760</u> (Obligation to Provide Notice)	The order amends <u>FINRA Rule 6760</u> to require underwriters subject to that rule to report a number of new data elements to FINRA with respect to new issues in Corporate Debt Securities.	Effective Date: The effective date will be no more than 270 days following Commission approval.	Underwriters of Corporate Debt Securities should be prepared to provide the new data elements once the amendment goes effective.
SEC Rule Filings						
Securities Exchange Act Release (34-87784) December 18, 2019	Private Placements Regulation D Accredited Investors	Amending the “Accredited Investor” Definition	Rule 501 of Regulation D (<u>17 CFR 230.501</u>)	The Release proposes changes to the “Accredited Investor” Definition.	Comment due date: 60 days from publication in the Federal Register.	None. The notice is for the purpose of soliciting comments on the proposed amendments.

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<u>FINRA Guidance</u>						
None						
<u>No Action Letters</u> of particular relevance to Broker-Dealers						
None						
Selected Enforcement and Litigation Actions						
SEC Press Release 2019-268 December 18, 2019	Enforcement Partial Tender Offer	SEC Charges Broker-Dealers with Illicitly Profiting in Partial Tender Offer	Exchange Act <u>Rule 14e-4</u> (Prohibited Transactions in Connection with Partial Tender Offers)	The Press Release announces settled charges against two broker-dealers who, independently, violated Rule 14e-4 by tendering in a partial tender offer more than their net long position in the shares. Each firm was fined \$50,000 and paid disgorgement.	Immediately	None
FINRA News Release (<u>December 30, 2019</u>)	Enforcement Unit Investment Trusts Supervision	FINRA Orders Firm to Pay \$3.8 Million in Restitution to Customers for Supervisory Failures Involving Unit Investment Trusts	<u>FINRA Rule 3100 (Supervision)</u>	The Press Release states that the restitution related to potentially excessive sales charges caused by early rollovers of UITs. FINRA also found that the Firm's supervisory system was not reasonably designed to supervise the suitability of those early roll overs.	Immediately	None

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FINRA News Release (<u>December 26, 2019</u>)	Enforcement Custodial Accounts Uniform Gifts to Minors Act (UGMA) and Uniform Transfers to Minors Act (UTMA) Supervision	FINRA Sanctions Five Firms for Failing to Reasonably Supervise Custodial Accounts	<u>FINRA Rule 2900 (Know Your Customer)</u>	The Press Release states that the firms failed to track or monitor whether custodians timely transferred control over custodial property to beneficiaries at the time the beneficiary reached the age of majority. The combined fines totaled \$1.4 million.	Immediately	None, though firms that allow the opening of custodial accounts may want to confirm that they have appropriate procedures to ensure the timely transfer of control to the beneficiary.
FINRA News Release (<u>December 23, 2019</u>)	Enforcement Market Access Rule Supervision	FINRA, CBOE, Nasdaq, NYSE and Affiliated Exchanges Fine Brokerage Firm \$6.5 Million for Supervision and Market Access Rule Violations	<u>Rule 15c3-5 (Risk Management Controls for Brokers or Dealers with Market Access)</u>	The Press Release states that the Firm did not establish a supervisory system that was reasonably designed to monitor for potential spoofing, layering, wash sales and pre-arranged trading by direct access clients. The Release also notes that the Firm was put on notice of such gaps in its surveillance system by correspondence with one of its direct market access clients and by an internal audit report.	Immediately	None

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FINRA News Release (December 19, 2019)	Enforcement Best Execution Supervision	FINRA Fines Firm \$1.25 Million for Best Execution Violations	Various	As recited in the AWC, the Firm routed non-directed customer orders to four broker-dealers that paid for order flow but did not exercise reasonable diligence to ascertain whether these four broker-dealers provided the best market for these securities as compared to other execution venues. In addition, the Firm did not systematically review certain order types, and failed to establish and maintain a reasonable supervisory system.	Immediately	None
FINRA News Release (December 17, 2019)	Enforcement Market Access Rule Supervision	FINRA and Various Exchanges Permanently Bar Firm CEO and Fine Firm for Supervision and Market Access Rule Violations	Rule 15c3-5 (Risk Management Controls for Brokers or Dealers with Market Access)	The Press Release states that the CEO and Firm “substantially assisted” improper trading by foreign traders.	Immediately	None

Other matters of interest including [OCIE materials](#) and other SEC [press releases](#), [SEC public statements](#), and [FINRA press releases](#)

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

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