

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 February 2020

By Glen Barrentine

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<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	No action needed
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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>						
<u>Targeted Examination Letter on Zero Commissions</u> February 2020	Examinations Zero Commissions	<u>Targeted Examination Letter on Zero Commissions</u> February 2020	Not Applicable	The requests for information suggest FINRA intends to consider how firms that charge zero commissions meet their obligations to customers relating to execution, payment for order flow, marketplace rebates, and sweeps, and with	Immediately	Firms that have zero commissions should carefully review the letter and, in particular, the requests for documents and information set forth therein.

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				respect to marketing and disclosures to customers with respect to the above matters and customer fees generally.		
FINRA Regulatory Notice <u>20-07</u>	Sales Practices Supervision UTMA/UGMA Accounts	UTMA and UGMA Accounts: FINRA Reminds Member Firms of Their Responsibilities for Supervising UTMA and UGMA Accounts	Various	The Notice reminds member firms that the discretion granted to a custodian under an UTMA or UGMA account generally terminates when the beneficiary reaches the age of majority or upon the happening of certain other events. Firms are required to inform themselves of the termination date and take into account the termination of the custodianship resulting therefrom. This issue has been the source of recent <u>enforcement actions</u> and was reflected in <u>FINRA's 2019 Report on Examination Findings and Observations</u> .	Immediately	Member firms may want to review their procedures for handling UTMA and UGMA accounts against the recent notice.
<u>FINRA Regulatory Notices</u>						
FINRA Regulatory Notice <u>20-07</u>	Sales Practices Supervision UTMA/UGMA Accounts	UTMA and UGMA Accounts: FINRA Reminds Member Firms of Their Responsibilities	Various	The Notice reminds member firms that the discretion granted to a custodian under an UTMA or UGMA account	Immediately	Member firms may want to review their procedures for handling UTMA and UGMA

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
		for Supervising UTMA and UGMA Accounts		generally terminates when the beneficiary reaches the age of majority or upon the happening of certain other events. Firms are required to inform themselves of the termination date and take into account the termination of the custodianship resulting therefrom. This issue has been the source of recent <u>enforcement actions</u> and was reflected in <u>FINRA's 2019 Report on Examination Findings and Observations</u> .		accounts against the recent notice.
FINRA Regulatory Notice <u>20-06</u>	Financial Reporting Annual Reporting Requirement Exemption	SEC Financial Responsibility Rules: FINRA Announces Update of the Interpretations of Financial and Operational Rules	<u>SEA Rule 17a-5</u> (Reports to be made by certain brokers and dealers)	The Notice announces that FINRA is updating its <u>published interpretations of financial and operational rules</u> to reflect recent changes to SEA Rule 17a-5(e)(1)(i)(A). The referenced change relates to an exemption with respect to the annual reporting requirement for broker-dealers that limit their business to acting as broker for a single issuer in soliciting subscriptions for	The referenced amendment became effective August 13, 2019.	None This Notice announces an amendment to <u>SEA Rule 17a-5</u> that became effective last August. <i>See</i> <u>SEC Release No. 34-86073</u> (June 10, 2019).

* Other rules may also apply

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				securities of that issuer.		
FINRA Regulatory Notice <u>20-05</u>	Continuing Education Program	Continuing Education Program Transformation: FINRA Requests Comments on a Proposal to Implement the Recommendations of the CE Council Regarding Enhancements to the Continuing Education Program for Securities Industry Professionals	<u>FINRA Rule 1240</u> (Continuing Education Requirements)	The Notices announces that FINRA is soliciting comments with respect to changes to the continuing education requirements.	Comment Deadline: April 20, 2020	None This Notice is for the purpose of soliciting comments on proposed changes to existing rules.
<u>Other FINRA Notices</u>						
Information Notice <u>2/14/20</u>	FINRA Administrative Governance	2020 Involvement and Election Process Overview	Not Applicable	The Notice seeks to encourage members firms and other interested parties to become involved in FINRA's advisory and <i>ad hoc</i> committees, the NAC, Regional Committees, the Board of Governors and the FINRA Investor Education Foundation Board and provides information regarding the process for filing vacancies on various FINRA committees and its board of governors.	Immediately	None.

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Information Notice 2/3/20	Section 31 Fees	New Rate for Fees Paid under Section 31 of the Exchange Act	Not Applicable	The Notice announces that the Section 31 fee rate applicable to specified securities transaction on the exchanges and in the over-the-counter markets will increase to a new rate of \$22.10 per million dollars in transactions effective February 18, 2020.	February 18, 2020	None
<u>FINRA Rule Filings</u>						
FINRA Rule Filing 2019-027 (34-88254)	Arbitrations Customer Code Inactive Firms and Associated Persons	Order Approving a Proposed Rule Change to Amend FINRA Rule 12000 Series to Expand Options Available to Customers if a Firm or Associated Person is or Becomes Inactive	Code of Arbitration <u>Customer Code</u>	The Order approves rule changes to FINRA's Customer Arbitration Code that provides customers with additional options should the firm or associated person become inactive before a claim is filed or during a pending arbitration.	Effective Date: To be announced	None
FINRA Rule Filing 2020-005 (34-88251)	Arbitrations Expungement Requests Fees	Notice of Filing of a Proposed Rule Change to Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Deputes to Apply Minimum Fees to Requests for Expungement of	Code of Arbitration <u>Customer Code</u> <u>Industry Code</u>	The Proposal would impose minimum fees on requests for expungement of customer dispute information.	Comment Due Date: March 18, 2020	None The Notice is for the purpose of soliciting comments on a proposed rule amendment.

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		Customer Disputes				
FINRA Rule Filing 2019-008 (34-88214)	Corporate Bonds New Issue Reference Service	Order Granting Petition for Review and Scheduling Filing of Statements	<u>SEA Rules of Practice 431</u> (Commission consideration of actions made pursuant to delegated authority),	The Order reflects the broad scope of <u>SEA Rules of Practice 431</u> (Commission consideration of actions made pursuant to delegated authority), which grants the right to challenge SRO rules approved by the Division of Trading and Markets under delegated authority.	The Order gives all persons until March 16, 2020 to file written statements in support or in opposition.	None The Order stays the underlying rule pending final resolution.
FINRA Rule Filing 2020-004 (34-88135)	Fees Trade Reporting FINRA/Nasdaq Trade Reporting Facility Fees and Credits)	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate Transaction Credits and Trade Reporting Fees Applicable to Retail Participants That Use the FINRA/Nasdaq Trade Reporting Facility	<u>FINRA Rule 7610A</u> (Securities Transaction Credit) <u>FINRA Rule 7620A</u> (FINRA/Nasdaq Trade Reporting Facility Reporting Fees)	The Order eliminates transaction credits and trade reporting fees applicable to retail participants that use the FINRA/Nasdaq Trade Reporting Facility gives members additional time to migrate TRACE reporting from a Computer-to-Computer Interface.	Effective Date: Immediately	None
<u>SEC Rule Filings</u>						
Securities Exchange Act Release (34-88216) February 14, 2020	National Market System Market Data Infrastructure	Market Data Infrastructure Proposal	<u>Regulation NMS</u>	The Proposal would amend existing Regulation NMS Rules 600 and 603 and adopt new Rule 614 to make changes in the manner that that	Comment Deadline: 60 days after publication in the Federal Register	None This Notice is for the purpose of soliciting comments on proposed changes to existing rules

* Other rules may also apply

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				information with respect to quotations and transactions in NMS stocks is collected, consolidated and disseminated.		and on a newly proposed rule.

FINRA Guidance

<u>Targeted Examination Letter on Zero Commissions</u> February 2020	Examinations Zero Commissions	<u>Targeted Examination Letter on Zero Commissions</u> February 2020	Not Applicable	The requests for information suggest FINRA intends to consider how firms that charge zero commissions meet their obligations to customers relating to execution, payment for order flow, marketplace rebates, and sweeps, and with respect to marketing and disclosures to customers with respect to the above matters and customer fees generally.	Immediately	Firms that have zero commissions should carefully review the letter and, in particular, the requests for documents and information set forth therein.
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No Action Letters 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
<u>SEC Press Release 2020-43</u>	Sales Practices Failure to Supervise Suitability Single-Inverse ETFs	SEC Charges Firms in Connection with Investment Recommendation Practices	<u>SEA Section 15(b)(4)</u>	The Order focuses on recommendations relating to single-inverse ETF investments sold to retail investors, which, if held for more than one day, hold the potential of triggering large and unexpected losses, and, therefore, may not be suitable for most retail investors.	Immediately	Member firms may want to consider whether their practices, policies and procedures relating to single-inverse ETFs and similar products.

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

None

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.

If you would like further information please contact:



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* Other rules may also apply

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

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