

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 March 2020

By Glen Barrentine

Internal links

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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> |

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|-----------------|---|----------------|-------------|----------------------|------------------|
| Chart color key | Action may be required (does not include continuing education items) | Administrative | Arbitration | Continuing education | No action needed |
|-----------------|---|----------------|-------------|----------------------|------------------|

| Item | Subject matter | Heading | Relevant rule* | Comments | Relevant date | Impact on member |
|--|--------------------------------------|---|--------------------------------------|--|---------------|---|
| <u>This month's item(s) of note</u> | | | | | | |
| Public Statement <u>4/2/20</u> | Regulation Best Interest Form CRS | Investors Remain Front of Mind at the SEC: Approach to Allocation of Resources; Implementation of Regulation Best Interest and Form CRS | Regulation Best Interest Form CRS | The statement announces the SEC's current view to continue with the June 30, 2020 compliance date for Reg BI and the delivery of Form CRS. | June 30, 2020 | Firms should continue their efforts to meet the June 30 th compliance dates for Regulation Best Interest and Form CRS. |
| Information Notice <u>3/26/20</u> | Cybersecurity Pandemic | Cybersecurity Alert: | Various | The Notice provides cybersecurity guidance to | Immediately | All members should read and consider this Notice |

* Other rules may also apply

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| | | Measures to Consider as Firms Respond to the Coronavirus Pandemic (COVID-19) | | members to address increased pandemic related vulnerability to cybersecurity attack and to protect customer and firm data. | | carefully and consider whether they need to implement changes to their current processes and procedures. |
| FINRA Regulatory Notice 20-08 | Pandemic Business Continuity Plans Cybersecurity Supervision | Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief | Various | The Notices provides both guidance on pandemic preparedness and regulatory relief to impacted member firms. For further information see Regulation Tomorrow Blog Post: FINRA's Guidance to Broker-Dealers on Pandemic Preparedness (coronavirus, COVID-19) | Immediately | All members should read and consider this Notice carefully. |
| FINRA Rule Filing 2019-030 (34-88482) | Membership Applications both new and continuing Pending Arbitration Claims | Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Membership Application Program ("MAP") to Address the Issue of Pending Arbitration Claims | FINRA Rules 1000 – Member Application and Associated Person Registration | The Order amends the FINRA membership application program to provide for consideration of pending arbitrations against members and associated persons within the membership approval process. The Order also mandates a materiality consultation where a member is contemplating adding one or more associated | Effective Date: To Be Announced | At a minimum, it is likely that most members will need to revise their hiring procedures to comply with the Order's new materiality consultation mandate. Other changes to policies and procedures may also be required as a result of the |

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| | | | | persons involved in sales, where the member or the contemplated sales person has a “covered pending arbitration claim”, unpaid arbitration award, or an unpaid arbitration settlement. | | approved changes. |
| <u>FINRA Regulatory Notices</u> | | | | | | |
| FINRA Regulatory Notice <u>20-10</u> | Underwritings Private Placements | FINRA Amends the FINRA Corporate Financing Rule | <u>FINRA Rule 5110</u> (Corporate Financing Rule – Underwriting Terms and Arrangements) | The Notice informs members that FINRA has made substantive, organizational and terminology changes to <u>FINRA Rule 5110</u> (Corporate Financing Rule – Underwriting Terms and Arrangements) . | Certain requirements were effective March 20, 2020 while most requirements are effective September 16, 2020. | Member firms that are involved in underwritings and offerings should consider whether these changes may require updates to their policies and procedures. |
| FINRA Regulatory Notice <u>20-09</u> | Municipal Securities Trade Reporting Fee | 2020 GASB Account Support Fee to Fund the Governmental Accounting Standards Board | <u>Section 14 of Schedule A to FINRA’s By-Laws</u> | The Notice announces the estimated GASB Accounting Support Fee for 2020, which is assessed on the par value of municipal security trades. | Immediately | None |
| FINRA Regulatory Notice <u>20-08</u> | Pandemic Business Continuity Plans Cybersecurity Supervision | Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief | Various | The Notices provides both guidance on pandemic preparedness and regulatory relief to impacted member firms. | Immediately | All members should read and consider this Notice carefully and consider whether they need to |

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| | | | | For further information see Regulation Tomorrow Blog Post: <u>FINRA's Guidance to Broker-Dealers on Pandemic Preparedness (coronavirus, COVID-19)</u> | | implement changes to their current processes and procedures. |
| <u>Other FINRA Notices</u> | | | | | | |
| Information Notice 3/26/20 | Cybersecurity Pandemic | Cybersecurity Alert: Measures to Consider as Firms Respond to the Coronavirus Pandemic (COVID-19) | Various | The Notice provides cybersecurity guidance to members to address increased pandemic related vulnerability to cybersecurity attack and to protect customer and firm data. | Immediately | All members should read and consider this Notice carefully and consider whether they need to implement changes to their current processes and procedures. |
| <u>FINRA Rule Filings</u> | | | | | | |
| FINRA Rule Filing 2020-008 (34-88495) | Security Trades Exchange-Listed Securities Erroneous Trades | 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 Order extends the current pilot program established by FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities). exchange-listed securities. | Extension Date: October 20, 2020 | None |
| FINRA Rule Filing 2019-030 (34-88482) | Membership Applications both new and continuing Pending Arbitration Claims | Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Membership Application | FINRA Rules 1000 – Member Application and Associated Person Registration | The Order amends the FINRA membership application program to provide for consideration of | Effective Date: To Be Announced | At a minimum, it is likely that most members will need to revise their hiring procedures to |

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| | | Program (“MAP”) to Address the Issue of Pending Arbitration Claims | | pending arbitrations against members and associated persons within the membership approval process. The Order also mandates a materiality consultation where a member is contemplating adding one or more associated persons involved in sales, where the member or the contemplated sales person has a “covered pending arbitration claim”, unpaid arbitration award, or an unpaid arbitration settlement. | | comply with the Order’s new materiality consultation mandate. Other changes to policies and procedures may also be required as a result of the approved changes. |
| FINRA Rule Filing 2020 - 009 (34-88425) | Securities Trading NMS Stocks Circuit Breakers | Notice of Filing and Immediate Effectiveness of a proposed Rule Change to Amend FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) | FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) | The Notices allows members to resume OTC trading in all NMS stocks on the day following the declaration of a Level 3 trading halt as they normally would and without having to wait until the primary listing exchange opens. | Immediately | Members that engage in OTC trading of NMS Stocks should revise their procedures to reflect the change made by the Notice. |
| FINRA Rule Filing 2020- 007 (34-88422) | Regulation Best Interest Suitability Non-Cash Compensation | Notice of Filing of a Proposed Rule Change to FINRA’s Suitability, Non-Cash Compensation | Various | The Notice proposes amendments to various FINRA rules. These include amendments to | Comment Due Date: April 15, 2020 | None The Notice is for the purpose of soliciting comments on |

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| | Capital Acquisition Brokers | and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest | | FINRA and CAB suitability rules to state that they do not apply to recommendations subject to Regulation Best Interest, to remove the element of control from the quantitative suitability obligation and to conform the rules governing non-cash compensation to Reg. BI's limitations on sales contests, sales quotas, bonuses and non-cash compensation. | | proposed rule changes. |
| FINRA Rule Filing 2020-006 (34-88324) | Trade Reporting FINRA/NYSE Trade Reporting Facility Fees | Notice of Filing of and Immediate Effectiveness of Proposed Rule Change to Modify the Trade Reporting Fees Applicable to the FINRA/NYSE Trade Reporting Facility | FINRA Rule 7620B (FINRA/NYSE Trade Reporting Facility Reporting Fees) | The Notice amends the manner in which trade reporting fees are calculated on the FINRA/NYSE Trade Reporting Facility. | Effective Date: Immediately | None |
| <u>SEC Rule Filings</u> | | | | | | |
| None | | | | | | |
| <u>FINRA Guidance</u> | | | | | | |
| Guidance (April 3, 2020) | Pandemic Preparedness | State "Shelter-in-Place" and "Stay-at-Home" Orders | Not Applicable | FINRA's guidance provides a helpful link to state "Shelter-in-Place" and "Stay-at-Home" Orders | Immediately | Members may want to review FINRA's guidance as they continue to navigate |

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| | | | | | | through the current pandemic. |
| Podcast (<u>March 31, 2020</u>) | Pandemic Preparedness | Business in the Time of COVID-19: BCPs, Regulatory Relief & More” | Various | FINRA’s podcast consists of a discussion by FINRA Chief Legal Officer, Bob Colby, and Head of Member Supervision, Bari Havlik, who discuss FINRA expectations and how firms and FINRA are adapting to the pandemic. | Immediately | Members may want to review FINRA’s guidance as they continue to navigate through the current pandemic. |
| FAQs (<u>Updated April 6, 2020</u>) | Pandemic Preparedness | Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic | Various | <p>These FAQs Notices provides guidance and regulatory relief across a broad range of topics, including filing and reporting deadlines, net capital, best execution, supervision, remote offices, qualification examinations, and continuing education.</p> <p>For further information see Regulation Tomorrow Blog Post: FINRA’s Updates FAQs Related to COVID-19 Regulatory Relief</p> | Immediately | Members may want to review FINRA’s guidance as they continue to navigate through the current pandemic. |
| SEC Guidance | | | | | | |

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| Public Statement <u>4/2/20</u> | Regulation Best Interest Form CRS | Investors Remain Front of Mind at the SEC: Approach to Allocation of Resources; Implementation of Regulation Best Interest and Form CRS | Regulation Best Interest Form CRS | The statement announces the SEC's current view to continue with the June 30, 2020 compliance date for Regulation BI and the delivery of Form CRS. | June 30, 2020 | Firms should continue their efforts to meet the June 30 th compliance dates for Regulation Best Interest and Form CRS. |
| Division of Trading and Markets Staff Statement <u>4/2/20</u> | Filings Signatures Notarizations | Division of Trading and Markets Staff Statement Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns | Various | The Statement provides relief for persons required to submit to the Division of Trading and Markets certain documents in paper format, including. The relief also extends to requirements relating to manual signatures and notarizations. | Effective for the period from and including March 16, 2020 to June 30, 2020 | None The Statement provides regulatory relief to persons that wish to avail themselves thereof. |
| SEC Release No. 34-2020 | Order Routing Disclosures and Reporting | Order Granting Application by the Financial Information Forum and Security Traders Association for a Temporary Exemption Pursuant to Rule 606(c) of Regulation NMS Under the Exchange Act in Response to the Effects of COVID-19 | <u>Securities Exchange Act Rule 606 of Regulation NMS</u> (Disclosure of Order Routing Information) | The Order provides the following temporary exemptions to broker-dealers. Broker-dealers are exempt from the requirement to provide the public report covering the first quarter of 2020 required by Rule 606(a) until May 29, 2020; and broker-dealers that engage in outsourced routing activity are exempt from the requirement | See the referenced periods in the preceding column. | None The Order provides regulatory relief to broker-dealers that wish to avail themselves thereof. |

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| | | | | to collect the monthly customer-specific data required by Rule 606(b)(3) for such activity until June 1, 2020, and are exempt until July 29, 2020, from the requirement to provide a customer-specific report of June 2020 outsourced routing data within seven business days for customer requests for such customer-specific reports that are made on or before July 17, 2020. | | |
| No Action Letters of particular relevance to Broker-Dealers | | | | | | |
| No Action Letter Dated <u>March 16, 2020</u> | Consolidated Audit Trail (CAT) | No Action Letter to Michael Simon, CAT NMS Plan Operating Committee Chair | CAT Compliance Rules | The No Action Letter provides relief to SRO's regarding their enforcement of their CAT compliance rules. | Effective immediately and through May 20, 2020 | |
| Selected Enforcement and Litigation Actions | | | | | | |
| None | | | | | | |
| Other matters of interest including <u>OCIE materials</u> and other <u>SEC press releases</u>, <u>SEC public statements</u>, and <u>FINRA press releases</u> | | | | | | |
| 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 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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