

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 May 2020

By Glen Barrentine

Internal links

<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	No action needed

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<u>This month's item(s) of note</u>						
Regulatory Notice 20-16	Supervision Pandemic Remote Locations	FINRA Shares Practices Implemented by Firms to Transition to, and Supervise in, a Remote Work Environment During the COVID-19 Pandemic	Various	The Notice informs members of practices that FINRA observed in discussions with member firms regarding their supervisory practices in a remote work environment.	Immediately	While the Notice does not contain any mandatory practices, member firms may wish to compare their current practices against those described in the Notice.

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<u>Regulatory Notice 20-15</u>	Membership Applications both new and continuing Pending Arbitration Claims	FINRA Amends Rules Governing its Membership Application Program to Incentivize Payment of Arbitration Awards	<u>FINRA Rules 1000</u> – Member Application and Associated Person Registration	The Notices informs members of recently approved amendments to FINRA’s membership application program. These amendments provide for consideration of pending arbitrations against members and associated persons as part of the membership approval process. The amendments also mandate 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.	Effective Date September 14, 2020	At a minimum, it is likely that most members will need to revise their hiring procedures to comply with the new materiality consultation mandate. Other changes to policies and procedures may also be required as a result of the approved changes.
<u>FAQs (Updated Through May 2020)</u>	Pandemic Preparedness	Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic	Various	FINRA has updated its Pandemic Preparedness FAQ with respect to a number of topics.	Immediately	Members may want to review FINRA’s guidance as they continue to navigate

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				These include: fingerprints, persons functioning as principals for a limited time, 3120 reports, and 3130 certifications, availability of the waiver process for qualification examinations, verification of Form U4 information, and the need for documentation of reliance on FINRA's temporary relief.		through the current pandemic.
<u>FINRA Regulatory Notices</u>						
Regulatory Notice 20-16	Supervision Pandemic Remote Locations	FINRA Shares Practices Implemented by Firms to Transition to, and Supervise in, a Remote Work Environment During the COVID-19 Pandemic	Various	The Notice informs members of practices that FINRA observed in discussions with member firms regarding their supervisory practices in a remote work environment.	Immediately	While the Notice does not contain any mandatory practices, member firms may wish to compare their current practices against those described in the Notice.
Regulatory Notice 20-15	Membership Applications both new and continuing Pending Arbitration Claims	FINRA Amends Rules Governing its Membership Application Program to Incentivize Payment of Arbitration Awards	FINRA Rules 1000 – Member Application and Associated Person Registration	The Notices informs members of recently approved amendments to FINRA's membership application program. These amendments provide for consideration of	Effective Date September 14, 2020	At a minimum, it is likely that most members will need to revise their hiring procedures to comply with the new materiality consultation mandate.

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				<p>pending arbitrations against members and associated persons as part of the membership approval process. The amendments also mandate 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.</p>		<p>Other changes to policies and procedures may also be required as a result of the approved changes.</p>
<p><u>Regulatory Notice 20-14</u></p>	<p>Supervision Sales Practices Oil-linked ETPs</p>	<p>Sales Practice Obligations With Respect to Oil-Linked Exchange-Traded Products</p>	<p><u>FINRA Rule 3110</u> (Supervision)</p>	<p>This Notice reminds firms of their sales practice obligations in connection with oil-linked ETPs, including that recommendations to customers must be based on a full understanding of the terms, features, and risks of the product recommended; communications with the public must be fair and</p>	<p>Immediately</p>	<p>Firms that recommend oil-linked ETPs to their customers should consider their current practices against those recommended in the Notice.</p>

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				accurate; firms must have reasonably designed supervisory procedures in place to ensure that these obligations are met; and firms that offer oil-linked ETPs must train registered representatives who sell these products about the terms, features and risks of these products.		
<u>Regulatory Notice 20-13</u>	Supervision Fraud	FINRA Reminds Firms to Beware of Fraud During the Coronavirus (COVID-19) Pandemic	<u>FINRA Rule 3110</u> (Supervision)	This Notice outlines four common scams—(1) fraudulent account openings and money transfers; (2) firm imposter scams; (3) IT Help Desk scams; and (4) business email compromise schemes—and describes measures that firms and associated persons may take to mitigate related risks.	Immediately	While the Notice does not contain any mandatory practices, member firms may wish to compare their current practices against those described in the Notice.
<u>Regulatory Notice 20-12</u>	Cybersecurity	FINRA Warns of Fraudulent Phishing Emails Purporting to be from FINRA	Not Applicable	FINRA’s Notice warns member firms of a widespread, ongoing phishing campaign that involves fraudulent emails	Immediate	Member firms that have not already done so, may want to provide an alert to their associated persons

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				purporting to be from FINRA officers, including Bill Wollman and Josh Drobynk (see Attachment A). These emails have a source domain name “@broker-finra.org” and request immediate attention to an attachment.		regarding the phishing scheme and may also want to use FINRA’s Notice as an opportunity to remind associated persons of the steps they should take to avoid phishing schemes.

Other FINRA Notices

None

FINRA Rule Filings

<u>SR-FINRA-2020-005</u> <u>34-88945</u>	Arbitration Fees	Order Approving a Proposed Rule Change to Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Disputes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information	<u>FINRA Rule Series 12000</u> (Code of Arbitration Procedure for Customer Disputes) <u>FINRA Rule Series 13000</u> (Code of Arbitration Procedure for Industry Disputes)	The Order approves minimum fees with respect to requests for expungement of customer dispute information..	Effective Date: To be announced	None
<u>SR-FINRA-2020-015</u> <u>34-88917</u>	Enforcement Member Application and Associated Person Registration OTC Trading	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Amend Certain Timing, Method of Service and Other Procedural Requirements in FINRA Rules	Various	The Notice temporarily amends a number of FINRA rule requirements to (i) allow, and in some instances require, FINRA to serve certain documents by electronic mail	Effective Date: Immediately and through June 15, 2020.	The temporary amendments involve rules related to member application and associated person registration, OTC trading,

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
		During the Outbreak of the Coronavirus Disease (COVID-19)		(or “email”); (ii) require that applicants, respondents, and other parties file or serve documents by electronic mail in connection with specified proceedings and processes, unless the parties agree to an alternative method of service; (iii) provide extensions of time to FINRA staff, respondents and other parties in connection with certain adjudicatory and review processes; and (iv) allow for oral arguments before the National Adjudicatory Council (“NAC”) to be conducted by video conference.		and enforcement proceedings. Persons who are involved in such matters should consider whether the impact of the Notice on the proceeding and processes related thereto.
<u>SR-FINRA-2020-013</u> <u>34-88870</u>	Enforcement Minor Rule Violation Plan Consolidated Audit Trail (CAT)	Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Add FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule) to FINRA's Minor Rule Violation Plan (“MRVP”).	<u>FINRA Rule 6800 Series</u> (Consolidated Audit Trail Compliance Rule)	The Notice adds violations of the Consolidated Audit Trail rules to FINRA's minor rule violation plan.	Immediately	None

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<u>SR-FINRA-2020-014</u> <u>34-88839</u>	Administrative Fees for Disciplinary Hearing Panelists	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 9231 to Provide for the Compensation of All Panelists that Serve in Connection with a FINRA Disciplinary Hearing	<u>FINRA Rule 9231</u> (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer)	The Notice effects an amendment of FINRA rules that provides for compensatory payments to FINRA disciplinary panelists.	Effective Date: June 4, 2020	None
<u>SEC Rule Filings</u>						
<u>34-88890</u>	The Consolidated Audit Trail (CAT)	Amendments to the National Market System Plan Governing the Consolidated Audit Trail	<u>The National Market System Plan Governing the Consolidated Audit Trail</u>	The amendment imposes public transparency requirements on the SROs that are participants in the Plan as well as financial accountability provisions.	Effective Date: 30 days after publication in the Federal Register.	None. The amendment applies to the SROs that are participants in the CAT Plan.
<u>FINRA Guidance</u>						
<u>COVID-19 Guidance and Relief</u>	Firms are urged to monitor updates to the guidance and relief set forth on <u>FINRA's COVID-19 Page</u> .					
Guidance (<u>May 20, 2020</u>)	Advertising Regulation Electronic Filing system.	<u>Frequently Asked Questions about Advertising Regulation</u> Frequently asked questions regarding FINRA Rule 2210, filing requirements and the how to use the Advertising Regulation Electronic Filing (AREF) system.	<u>FINRA Rule 2210</u> (Communications with the Public)	FINRA has updated its advertising guidance with the addition of item C. 2. 7., which provides that the revision of a previously filed retail communication for the purpose of removing references to “advisor” or “adviser” would not be a	Immediately	None

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				material change requiring re-filing.		
FAQs (<u>Updated Through May 2020</u>)	Pandemic Preparedness	Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic	Various	FINRA has updated its Pandemic Preparedness FAQ with respect to a number of topics. These include: fingerprints, persons functioning as principals for a limited time, 3120 reports, and 3130 certifications, availability of the waiver process for qualification examinations, verification of Form U4 information, and the need for documentation of reliance on FINRA's temporary relief.	Immediately	Members may want to review FINRA's guidance as they continue to navigate through the current pandemic.
SEC Guidance						
<u>COVID-19 Guidance and Relief</u>	Firms are urged to monitor updates to the guidance and relief set forth on <u>the SEC's COVID-19 Page</u> .					
<u>No Action Letters</u> of particular relevance to Broker-Dealers						

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<u>Securities Industry and Financial Markets Association</u> , May 15, 2020; see also <u>Incoming Letter</u>	Net Capital Receivables from bank sweep programs	Request for No-Action Relief Regarding Certain Bank Sweep Receivables under Rule 15c3-1	<u>SEA Rule 15c3-1</u> (Net Capital Requirements for Broker-Dealers)	The no action letter provides relief allowing certain receivables from bank sweep programs to be treated as allowable assets for purposes of the net capital computation.	Immediately	None
Selected Enforcement and Litigation Actions						
SEC Press Release 2020-104 <u>5/6/20</u>	Fraud Order Handling	SEC Charges Broker-Dealer for Order Routing Misrepresentations	Various	The Press Release states that the firm used an undisclosed arrangement to route certain customer orders to one of three unaffiliated broker-dealers. This practice contradicted the firm's marketing materials. The firm paid a \$5 mm penalty.	Immediately	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						

* Other rules may also apply

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.

If you would like further information please contact:



Glen Barrentine
Of Counsel, New York
T: +1 212 318 3292
glenbarrentine@nortonrosefulbright.com

Norton Rose Fulbright

Norton Rose Fulbright is a global law firm. We provide the world's preeminent corporations and financial institutions with a full business law service. We have more than 4000 lawyers and other legal staff based in more than 50 cities across Europe, the United States, Canada, Latin America, Asia, Australia, Africa, the Middle East and Central Asia.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure, mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright Verein, a Swiss verein, helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg. For more information, see nortonrosefulbright.com/legal-notice.

The purpose of this communication is to provide information as to developments in the law. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.