

# 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 June 2020

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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<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
<b><u>This month's item(s) of note</u></b>						
<u>Regulatory Notice 20-17</u>	Reporting	FINRA Revises Rule 4530 Problem Codes for Reporting Customer Complaints and for Filing Documents Online	<u>FINRA Rule 4530</u> (Reporting Requirements)	This Notice informs member firms that FINRA has updated the codes used for reporting customer complaints and for filing documents online. The updated codes relate to Regulation Best Interest and	July 18, 2020	Member firms should begin to use the new problem codes as of July 18, 2020.

\* Other rules may also apply

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				Form CRS. FINRA has also made related amendments to the exiting Rule 4530 Problem Codes related to suitability.		
<b><u>SR-FINRA-2020-019</u></b> <b><u>34-89188</u></b>	Supervision Office Inspections Extension of Time	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision)	<b><u>FINRA Rule Series 3100</u></b> (Supervision)	The Notice extends the date by which member firms must complete their calendar year 2020 inspections under Rule 3110(c) to March 31, 2021.	Extension Date: March 31, 2021	None  The Notice three additional months (until March 31, 2021) to complete calendar year 2020 office inspections.
<b><u>FINRA Regulatory Notices</u></b>						
<b><u>Regulatory Notice 20-20</u></b>	Consolidated Audit Trail (CAT)	FINRA Provides Updates on Regulatory Coordination Concerning CAT Reporting Compliance	Various	The Notice informs members of the implementation of a 17d-2 Plan to allocate responsibility among the SROs for oversight of CAT compliance, which, in the case of FINRA members, will be allocated solely to FINRA.	Immediately	None. The Notice merely informs FINRA members that oversight of their CAT compliance will fall to FINRA.
<b><u>Regulatory Notice 20-19</u></b>	Blue Sheet Data	FINRA and ISG Announce the Update of Blue Sheet Data Elements and Repositioning of Exchange Code Field	Various	The Notices informs members that they are required, effective immediately, to update certain data elements for Electronic Blue Sheets (EBS) to reflect the SEC's	Effective Date Immediately in part and November 30, 2020 in full.	Firms that have not already updated the data elements reflected in the Notice should do so immediately. Firms should also make preparation for the

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				approval of two new exchanges and to reserve certain data elements for MIAX PEARL Equities and Boston Security Token Exchange. Further, effective November 30, 2020, firms will be required to move the Exchange Code filed and its values within the EBS record layout.		additional changes set forth in the Notice.
<u>Regulatory Notice 20-18</u>	Suitability Non-Cash Compensation Regulation Best Interest Capital Acquisition Broker (CAB)	FINRA Amends Its Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest	Various	The Notice announces changes to FINRA's suitability and non-cash compensation rules that were made to avoid any potential inconsistency between such rules and Regulation Best Interest.	Immediately	The Notice does not impose new, substantive requirements on member firms.
<u>Regulatory Notice 20-17</u>	Reporting	FINRA Revises Rule 4530 Problem Codes for Reporting Customer Complaints and for Filing Documents Online	<u>FINRA Rule 4530</u> (Reporting Requirements)	This Notice informs member firms that FINRA has updated the codes used for reporting customer complaints and for filing documents online. The updated codes relate to Regulation Best Interest and	July 18, 2020	Member firms should begin to use the new problem codes as of July 18, 2020.

\* Other rules may also apply

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				Form CRS. FINRA has also made related amendments to the exiting Rule 4530 Problem Codes related to suitability.		
<b><u>Other FINRA Notices</u></b>						
<a href="#"><u>Information Notice – 6/25/20</u></a>	FINRA Gateway Form U4 Continuing Education	FINRA Gateway – Changes to Form U4 User Interface and Access to Continuing Education	Various	The Notice informs member firms of upcoming changes to the FINRA Gateway specific to the U4 User Interface and Continuing Education Access.	Various	None
<b><u>FINRA Rule Filings</u></b>						
<a href="#"><u>SR-FINRA-2020-019</u></a> <a href="#"><u>34-89188</u></a>	Supervision Office Inspections Extension of Time	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Extend the Time to Complete Office Inspections under FINRA Rule 3110 (Supervision)	<a href="#"><u>FINRA Rule Series 3100</u></a> (Supervision)	The Notice extends the date by which member firms must complete their calendar year 2020 inspections under Rule 3110(c) to March 31, 2021.	Extension Date: March 31, 2021	None The Notice three additional months (until March 31, 2021) to complete calendar year 2020 office inspections.
<a href="#"><u>SR-FINRA-2020-018</u></a> <a href="#"><u>34-89119</u></a>	Consolidated Audit Trail (CAT) Reporting	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule)	<a href="#"><u>FINRA Rule 6800 Series</u></a> (Consolidated Audit Trail Compliance Rule)	The Notice is intended to implement exemptive relief from the CAT NMS Plan and facilitates Industry Members reporting on June 22, 2020. Otherwise, the Notice makes	Effective Date: Immediately though the changes do not accelerate established reporting dates.	Member firms who are working to address their CAT reporting obligations should consider the changes to the Consolidated Audit Trail Compliance

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				numerous changes to the Consolidated Audit Trail Compliance Rule.		Rule made by the Notice.
<u>SR-FINRA-2020-007</u> <u>34-89091</u>	Suitability Non-Cash Compensation Regulation Best Interest Capital Acquisition Broker (CAB)	Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to FINRA's Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest	Various	The Notice amends FINRA's suitability and non-cash compensation rules for the purpose of avoiding any potential inconsistency between such rules and Regulation Best Interest.	Immediately	The Notice does not impose any new, substantive requirements on member firms.
<u>SR-FINRA-2020-017</u> <u>34-89055</u>	Enforcement Member Application and Associated Person Registration OTC Trading	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Effective Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015	Various	The Notice extends the effective date of temporarily amendments to a number of FINRA rule requirements that were made by <u>SR-FINRA-2020-015</u> <u>34-88917</u> from <u>June 15<sup>th</sup> to July 31<sup>st</sup></u> .  These amendments (i) allow, and in some instances require, FINRA to serve certain documents by electronic mail (or "email"); (ii) require that applicants,	Extended Effective Date: July 31, 2020	None. The temporary amendments involve rules related to member application and associated person registration, OTC trading, and enforcement proceedings. Persons who are involved in such matters should consider whether the impact of the Notice on the proceeding and processes

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				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.		related thereto.
<u>SR-FINRA-2020-016</u> <u>34-89036</u>	Margin Credit Default Swaps	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps)	<u>FINRA Rule 4240</u> (Margin Requirements for Credit Default Swaps)	The Notice extends an Interim Pilot Program governing margin requirements on credit default swaps from July 20, 2020 to September 1, 2021.	Extension Date: September 1, 2021	None. The Notice extends the effective date of an existing pilot program.
<b><u>SEC Rule Filings</u></b>						
(Release No. <u>34-89184</u> )	Risk Assessment Rules	Order Under Section 17(h)(4) of the Securities Exchange Act of	Exchange Act <u>Rule 17h-1T</u> (Risk Assessment	The Order increases the exemption threshold for the	Effective Date: Immediately	None. The Order increases an exemption

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	Exemptions	1934 Granting Exemption from Rule 17h-1T and Rule 17h-2T for Certain Broker-Dealers Maintaining Capital, Including Subordinated Debt of Greater than \$20 Million but Less than \$50 Million	Recordkeeping Requirements for Associated persons of Brokers and Dealers)  Exchange Act <u>Rule 17h-2T</u> (Risk Assessment Reporting Requirements for Brokers and Dealers)	risk assessment rules. The new exemption level applies to firms that maintain total assets of less than \$1 billion and maintain capital, including subordinated debt, of less than \$50 million.		threshold from the risk Assessment Rules.

### FINRA and SEC Guidance

[FINRA COVID-19 Guidance and Relief](#)

Firms are urged to monitor updates to the guidance and relief set forth on [FINRA's COVID-19 page](#).

During June, FINRA provided the following updates:

**Submission of Fingerprint Information:** The time for submission of fingerprint information for registered persons under FINRA Rule 1010(d) was extended to such date as is at least two weeks from the date the SEC staff specifies in a public notice.

**Verification of Form U4 Information:** To the extent verification of the information contained in a Form U4 is not feasible or practical, firms should document the reasons for such inability and should make reasonable efforts to verify the information by July 31, 2020 and, if necessary, file an amended Form U4 to correct any discrepancies.

**Temporary Extension of Time Under Rule 1220(b)(3)(B) (Qualifications):** FINRA is extending expiring qualification examination windows until August 31, 2020.

**Rule 3120 Reports and Rule 3130 Certifications:** Members with Rule 3120 Reports and/or Rule 3130 Certifications due between March 1, and July 1, 2020, may take up to July 31, 2020 to complete the report or certification.

[SEC COVID-19 Guidance and Relief](#)

Firms are urged to monitor updates to the guidance and relief set forth on the [SEC's COVID-19 page](#).

During June, the SEC provided the following updates:

**Staff Statement Regarding Temporary International Mail Service Suspensions to Certain Jurisdictions Related to the COVID-19 Pandemic:** The Divisions of Investment Management and Trading and Markets issued a joint staff statement regarding the requirements under the federal securities laws to mail certain regulatory communications to clients and customers who have not consented to electronic delivery and who have mailing addresses in international jurisdictions where mail service has been suspended. The statement provides for no action relief if certain arrangements are satisfied. The statement expires on the date that carriers resume mail delivery in the applicable jurisdiction.

**Updated Staff Statement: Regarding Requirements for Certain Paper Submissions in Light of COVID-19 Concerns:** In June, the Division of Trading and Markets extended previously granted relief with respect to the time for submission of certain paper submissions, including papers requiring manual and/or notarized

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	signatures. Such relief is now in effect to such date as is at least two weeks from the date the SEC staff specifies in a public notice.					
<a href="#"><u>Interpretive letter to Michael Markunas, B. Riley FBR, Inc. and B. Riley Wealth Management, Inc. June 16, 2020</u></a>	Referral Transaction Based Compensation Registration	<a href="#"><u>Interpretive letter to Michael Markunas, B. Riley FBR, Inc. and B. Riley Wealth Management, Inc. June 16, 2020</u></a>	<a href="#"><u>FINRA Rule 1210</u></a> (Registration Requirements)	FINRA's letter provides that a referring representative may receive transaction based compensation notwithstanding that such representative is not authorized to conduct the activity to which the investment banking activity to which the referral pertains.	Immediately	None
<b>SEC Guidance</b>						
<a href="#"><u>COVID-19 Guidance and Relief</u></a>	Firms are urged to monitor updates to the guidance and relief set forth on <a href="#"><u>the SEC's COVID-19 Page</u></a> .					
<b><u>No Action Letters</u> of particular relevance to Broker-Dealers</b>						
<b>None</b>						
<b>Selected Enforcement and Litigation Actions</b>						

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SEC Press Release 2020-142 <u>6/24/20</u>	Blue Sheet Data Books and Records	Brokerage Firm to Pay \$3.1 Million to Settle Charges of Providing Deficient Blue Sheet Data	Exchange Act Rules <u>17a-25</u> (Electronic Submission of Securities Transactions by Exchange Members, Brokers and Dealers) and <u>17a-4(j)</u> (Records to be Preserved by Certain Exchange Members, Brokers and Dealers)	This is one in a long line of cases against firms for inaccurate blue sheet data.	Immediately	None
SEC Press Release 2020-132 <u>6/12/20</u>	Sales Practices Seniors	SEC Charges Broker Who Defrauded Seniors Out of Almost \$1 Million	Various	The SEC has targeted sales practice abuses targeting elderly investors.	Immediately	Firms may want to review the allegations against their own programs.
FINRA News Release <u>6/4/20</u>	Sales Practices Mutual Funds Sales Charges	FINRA Orders Firm to Pay \$7.2 Million in Restitution to Customers Overcharged for Mutual Funds	Various	This is one of a long line of enforcement cases involving overcharges for mutual funds.	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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<u>OCIE Risk Alert:</u> Examination Initiative: LIBOR Transition Preparedness (June 18, 2020)	Examinations LIBOR Transition	Examination Initiative: LIBOR Transition Preparedness	Not Applicable	The Risk Alerts provides information about the scope and content of OCIE's planned examinations regarding preparedness for the transition away from LIBOR.	Immediately	None though firms that are or have transitioned from LIBOR may want to consider the information provided in OCIE's Risk Alert.

### 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:

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