

# 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 November 2019

By Glen Barrentine

## Internal links

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

<b>Chart color key</b>	<b>Action may be required (does not include continuing education items)</b>	<b>Administrative</b>	<b>Arbitration</b>	<b>Continuing education</b>	<b>Notifications / Request for comment</b>
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<b>Item</b>	<b>Subject matter</b>	<b>Heading</b>	<b>Relevant rule*</b>	<b>Comments</b>	<b>Relevant date</b>	<b>Impact on member</b>
<b><u>This month's item(s) of note</u></b>						
Speech by Stephanie Avakian, Co-Director, Division of Enforcement	Enforcement Retail Investors Financial Conflicts	What You Don't Know Can Hurt You	Not Applicable	Among the examples of financial conflicts that the speech identifies are mutual fund revenue sharing and cash sweep arrangements, UITs with multiple fee structures, and the administration of teacher retirement funds.	Immediately	While the speech focused on the advisory space, it also noted that the concerns discussed were applicable across the securities markets.

\* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
SEC Press Release <a href="#">2019-227</a> November 4, 2019	Enforcement Whistleblower Protection	SEC Charges Issuer and CEO with Violating Whistleblower Protection Laws to Silence Investor Complaints.	Exchange Act <a href="#">Rule 21F-17</a> (Staff communications with individuals reporting possible securities law violations)	The Press Release alleges that an online auction portal and its CEO violated the whistleblower protection law by conditioning the return of investors' money on the investors signing agreements prohibiting them from reporting potential securities law violations to law enforcement, including the SEC.	Immediately	None
<b><u>FINRA Regulatory Notices</u></b>						
FINRA Regulatory Notice <a href="#">19-36</a>	Registered Persons Sales Practices	Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer: FINRA Requests Comment on a Proposed Rule to Limit a Registered Person from Being Named a Customer's Beneficiary or Holding a Position of Trust for or on Behalf of a Customer.	Not Applicable	This Notice solicits comments on a proposed rule that would prohibit registered representatives from being named a beneficiary of a customer's estate or receiving a bequest from or holding a position of trust for a customer, e.g., as an executor or trustee or holding a power of attorney, unless the representative provides written notice thereof and receives approval from the firm. The proposal would not apply where the customer is a member of the	Comment Period Expires: January 10, 2020	None. The Notice is for the purpose of soliciting comments on a proposed rule.

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				registered person's immediate family.		
<b>Other FINRA Notices</b>						
Information Notice <a href="#">11/11/19</a>	Focus and Related Filings	Annual Report; FOCUS; Form Custody; Supplemental Statement of Income (SSOI); Supplemental Schedule for Derivatives and Other Off-Balance Sheet Items (OBS); and Supplemental Inventory Schedule (SIS)	<a href="#">SEA Rule 17a-5</a> (Reports to be Made by Certain Brokers and Dealers)  <a href="#">FINRA Rule 4524</a> (Supplemental Focus Information)	The Notice sets forth the due dates for the listed reports in 2020 and the first quarter of 2021.	Immediately	Firms are advised to make note of the referenced due dates.
<b>FINRA Rule Filings</b>						
FINRA Rule Filing 2019-027 <a href="#">(34-87557)</a>	Arbitrations Customer Dispute	Notice of Filing of 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	<a href="#">FINRA 12000 Series</a> (Code of Arbitration Procedures for Customer Disputes)	The proposed amendments would expand a customer's options to withdraw an arbitration claim if a member or associated person becomes inactive before a claim is filed or during a pending arbitration while also allowing customers to amend pleadings, postpone hearings, request default proceedings and receive a refund of filing fees.	Comment Due Date: December 13, 2019	None. The release is for the purpose of soliciting comments on the proposed amendments.
FINRA Rule Filing 2019-028 <a href="#">(34-87540)</a>	TRACE-Eligible Securities US Treasuries	Notice of Filing of a Proposed Rule Change to Allow FINRA to Publish or Distribute Aggregate	<a href="#">FINRA Rule 6750</a> (Dissemination of Transaction Information)	The proposal would amend <a href="#">FINRA Rule 6750</a> to provide FINRA with authority to distribute	Comment Due Date: December 11, 2019	None. The release is for the purpose of soliciting comments on

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	Dissemination of Transaction Information	Transaction Information and Statistics on US Treasury Securities		aggregate transaction information and statistics on US Treasury securities.		the proposed amendments.
FINRA Rule Filing 2019-022 <a href="#">(34-87470)</a>	Equity Initial Public Offerings New issues Distributions Allocations	Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 1, to Amend FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) and FINRA Rule 5131 (New Issue Allocations and Distributions)	<a href="#">FINRA Rule 5130</a> (Restrictions on the Purchase and Sale of Initial Equity Public Offerings)  <a href="#">FINRA Rule 5131</a> (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:  To be announced	Member firms should review their procedures and process related to the referenced rules in light of the approved amendments.
FINRA Rule Filing 2019-026 <a href="#">(34-87441)</a>	Margin TBOs CMOs Specified Pool Transactions	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR-FINRA-2015-036	<a href="#">FINRA Rule 4210</a> (Margin Requirements)	The filing extends the implantation date of certain margin requirements relating to TBAs, Specified Pool Transactions and CMOs for an additional year. The additional time is to avoid unnecessary disruption to the market in the covered instruments while FINRA is considering potential amendments to these requirements.	Extended Implantation Date:  March 25, 2021	None. The filing extends the implementation date for certain margin requirements for an additional year.

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**SEC Rule Filings**

**None**

**FINRA Guidance**

<a href="#"><u>Frequently Asked Questions</u></a> Regarding FINRA Rule 3230 (November 2019)	Telemarketing	FAQ Regarding FINRA Rule 3230	<a href="#"><u>FINRA Rule 3230 (Telemarketing)</u></a>	The FAQ provides an overview of the Telemarketing Rule.	Effective Date: Immediately	None. The FAQ reiterates previously provided guidance.
<a href="#"><u>FAQ</u></a> November 22, 2019  See also <a href="#"><u>FINRA Regulatory Notice 14-31</u></a>	Settlements Customer Disputes	Prohibited Conditions Relating to Expungement of Customer Dispute Information FAQ	<a href="#"><u>FINRA Rule 2081 (Prohibited Conditions Relating to Expungement of Customer Dispute)</u></a>	The FAQ reminds members and their associated persons that FINRA Rule 2081 prohibits including within a settlement of a customer dispute a provision that the customer consents to or does not oppose a request for expungement.	Effective Date: Immediately	None. The FAQ reiterates previously provided guidance.

**No Action Letters of particular relevance to Broker-Dealers**

**None**

**Selected Enforcement and Litigation Actions**

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<a href="#">FINRA Press Release</a> (Nov. 6, 2019)	Enforcement 529 Share Classes Failure to Supervise	FINRA Orders Multiple Firms to Pay More than \$12 million in Restitution to Customers for Supervisory Failures Involving 529 Plan Share Classes.	Various	FINRA's Press Release states that these matters pre-date FINRA's 529 Plan Share Class Initiative, which encouraged member firms to voluntarily self-report potential violations relating to 529 plans.	Immediately	None
<b>Other matters of interest including <a href="#">OCIE materials</a> and other <a href="#">SEC press releases</a>, <a href="#">SEC public statements</a>, and <a href="#">FINRA press releases</a></b>						
Speech by Stephanie Avakian, Co-Director, Division of Enforcement	Enforcement Retail Investors Financial Conflicts	What You Don't Know Can Hurt You	Not Applicable	Among the examples of financial conflicts that the speech identifies are mutual fund revenue sharing and cash sweep arrangements, UITs with multiple fee structures, and the administration of teacher retirement funds.	Immediately	While the speech focused on the advisory space, it also noted that the concerns discussed were applicable across the securities markets.

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SEC Press Release <u>2019-233</u> (Nov. 6, 2019)	SEC Enforcement Annual Report	SEC Division of Enforcement Publishes Annual Report for Fiscal Year 2019.	Not Applicable	The Report provides an overview of the SEC's Enforcement Program for fiscal year 2019.	Immediately	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 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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