

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 July 2020

By Glen Barrentine

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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>

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>Gifts/Business Entertainment/Non-Cash Compensation FAQs</u>	Gifts and Entertainment	<u>Gifts/Business Entertainment/Non-Cash Compensation FAQs</u>	<u>FINRA Rule 3220</u> (Influence or Reward Employees of Others) <u>FINRA Rule 2310</u> (Direct Participation Programs)	The FAQ states that the provision by an associated person as the host of a virtual business meeting or entertainment of reasonable quantities of food and beverage designed to be consumed by the recipient	Immediately	None

* Other rules may also apply

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			<p><u>FINRA Rule 2320</u> (Variable Contracts of an Insurance Company)</p> <p><u>FINRA Rule 2341</u> (Investment Company Securities)</p> <p><u>FINRA Rule 5110</u> (Corporate Financing Rule – Underwriting Terms and Arrangements)</p>	<p>employees and their guests during that virtual business entertainment event or meeting would not view ed as being subject to the \$100 gift limit, provided that the cost of the food and beverage as well as the frequency with which it is provided do not raise questions of propriety. In addition, the provision of food and beverages must not be preconditioned on achieving a sales target.</p>		
<u>FINRA Regulatory Notices</u>						
<u>Regulatory Notice 20-25</u>	Arbitration Expungement Customer Dispute Fees	FINRA Amends Arbitration Codes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information	<p><u>FINRA 12000 Series Rules</u> – Code of Arbitration Procedure for Customer Disputes</p> <p><u>FINRA 13000 Series Rules</u> – Code of Arbitration Procedure for Industry Disputes</p>	The Notice informs members of amendments to FINRA's Arbitration Codes that impose minimum fees to requests for expungement of customer dispute information.	Effective Date September 14, 2020	None
<u>Regulatory Notice 20-24</u>	Trade Reporting TRACE Delayed Treasury Spot and Portfolio Trades	FINRA Requests Comment on Proposed Changes to TRACE Reporting Relating to Delayed Treasury Spot and Portfolio Trades	<u>FINRA Rules 6730</u> – (Transaction Reporting)	The Notice requests comment on two proposed changes to the TRACE reporting rules. The proposed changes would require firms to: (1) identify corporate bond trades where the	Comment Date: September 14, 2020	None. The Notice is for the purpose of soliciting comment on proposed rule changes.

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				price of the trade is based on a spread to a benchmark Treasury security that was agreed upon earlier in the day (i.e., a “delayed Treasury spot trade”) and report the time at which the spread was agreed upon; and (2) identify corporate bond trades that are a part of a larger portfolio trade.		
<u>Regulatory Notice 20-23</u>	Digital Assets	FINRA Encourages Firms to Notify FINRA if They Engage in Activities Related to Digital Assets	None	The Notice encourages member firms to continue to keep their Risk Monitoring Analyst (formerly known as a “Regulatory Coordinator”) informed if the firm, or its associated persons or affiliates, engaged, or intended to engage, in activities related to digital assets, including digital assets that are non-securities.	FINRA’s request extends until July 31, 2021.	While the Notice “encourages” rather than require notice to FINRA regarding engagement in activities involving digital assets, compliance with FINRA’s request is likely helpful in identifying problematic activity and avoiding possible downstream enforcement actions.
<u>Regulatory Notice 20-22</u>	Margin Control and Restricted Securities Account Consolidation	FINRA Announces Updates to the Interpretations of FINRA’s Margin Rule Regarding Control and Restricted Securities and Consolidation of Accounts	<u>FINRA Rule 4210</u> (Margin Requirements)	The Notice clarifies and updates interpretations on FINRA’s margin rule webpage related to control and restricted securities and consolidation of accounts. The relevant	Immediately	Member firms that offer margin should update their policies and procedures as appropriate.

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				interpretations are set forth in the Notice and also set out in the Interpretations of FINRA's Margin Rule webpage.		
<u>Regulatory Notice 20-21</u>	Sales Practices Private Placements Retail Communications	FINRA Provides Guidance on Retail Communications Concerning Private Placement Offerings	<u>FINRA Rule 2210</u> (Communications with the Public)	The Notice provides guidance to assist member firms in their creation, review, approval, distribution or use of retail communications concerning private placement securities.	Immediately	Member firms that participate in the offering of private placements to retail investors may want to review their practices against the provided guidance.
Other FINRA Notices						
None of Significance						
FINRA Rule Filings						
<u>SR-FINRA-2020-023</u> <u>34-89441</u>	Consolidated Audit Trail (CAT) Reporting Firm Designated ID	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule)	<u>FINRA Rule 6810</u> (Definitions)	The Notice amends the definition of "Firm Designated ID" in FINRA Rule 6810 (Definitions) to conform the definition to changes approved in the National Market System Plan Governing the Consolidated Audit Trail.	Immediately	Firms that have reporting obligations under CAT should ensure that their systems and process are consistent with the recent amendments set out in the Notice.
<u>SR-FINRA-2020-022</u> <u>34-89423</u>	Enforcement Member Application and Associated Person Registration OTC Trading	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Further Extend the Expiration 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 SR-FINRA-2020-015 and then extended SR-FINRA-2020-017 to a date to be specified in a public	The expiration date is announced upon at least two weeks notice but not later than December 31, 2020.	None

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				<p>notice issued by FINRA, which date will be at least two weeks from the date of the notice, and no later than December 31, 2020.</p> <p>These amendments (i) allow, and in some instances require, FINRA to serve certain documents by electronic mail (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.</p>		
<u>SR-FINRA-2020-021</u> <u>34-89381</u>	Trading Options Position Limits	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 2360	<u>FINRA Rule 2360</u> (Options)	The Notice amends FINRA Rule 2360 (Options) to increase position	Effective Date: Immediately	Firms that must monitor for compliance with option positions limits should revise their

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	Exchange Traded Funds (ETFs)	(Options) to Increase Position Limits on Options on Certain Exchange-Traded Funds		limits on options on certain ETFs.		procedures and processes to take the increase provided by the Notice into effect.
<u>SR-FINRA-2020-011</u> <u>34-89305</u>	Supervision	Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Address Broker-Dealers with a Significant History of Misconduct	Various	The proposed rule change would make a number of changes to FINRA rules that are designed to address brokers with a significant history of misconduct. These changes include allowing a Hearing Officer in a disciplinary matter to impose conditions or restrictions on a member firm or respondent broker, requiring firms to adopt heightened supervisory procedures when a disciplinary matter is appealed or an eligibility request is under review. The proposal would also allow the disclosure on BrokerCheck of a firm's status as a "taping firm" under FINRA Rule 3170, and require firms to seek a materiality consultation when a natural person that seeks to become an owner, control person, principal or registered person has a history of	Comment Due Date: August 7, 2020	None. The Order is for the purpose of requesting comments on the proposed rule changes.

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<u>SR-FINRA-2020-020</u> <u>34-89218</u>	Sales Practice Registered Representatives Customer Beneficiary Position of Trust for a Customer	Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)	Newly proposed FINRA Rule 3241 (Registered Person Being Named a Customer's Beneficiary or Holding a Position of Trust for a Customer)	certain criminal or other events. The Notice solicits comments on proposed FINRA Rule 3241, which, subject to certain exceptions, would prohibit a registered representative from being named a customer's beneficiary or holding a position of trust for a customer. The proposed rule would condition certain of the exceptions on a notice, review and approval process.	Comment Due Date: The date to comment on this proposal has passed.	None
<u>SEC Rule Filings</u>						
<u>34-89394</u>	Broker-Dealer Liquidation	Covered Broker-Dealer Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act	Various	The Order implement provisions applicable to the orderly liquidation of certain large broker dealers as provided by Title II of the Dodd-Frank Act.	Effective Date: 60 days after publication in the Federal Register.	None
<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 FINRA's COVID-19 Page.					
<u>Gifts/Business Entertainment/Non-Cash Compensation FAQs</u>	Gifts and Entertainment	<u>Gifts/Business Entertainment/Non-Cash Compensation FAQs</u>	<u>FINRA Rule 3220</u> (Influence or Reward Employees of Others) <u>FINRA Rule 2310</u> (Direct Participation Programs)	The FAQ states that the provision by an associated person as the host of a virtual business meeting or entertainment of reasonable quantities of food and beverage designed to be	Immediately	None

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<u>Interpretive Letter to T. Douglas Hollowell, UBS Financial Services, Inc.</u> July 24, 2020	Customer Accounts Employee Equity Compensation Plan Accounts Bulk Transfers Negative Consent	<u>Interpretive Letter to T. Douglas Hollowell, UBS Financial Services, Inc.</u> July 24, 2020	Not Applicable	FINRA's letter provides that a member may use negative response letters to effect a bulk transfer of employee equity compensation plan accounts, as directed by an employer.	Immediately	None
SEC Guidance						
<u>COVID-19 Guidance and Relief</u>	Firms are urged to monitor updates to the guidance and relief set forth on the <u>SEC's COVID-19 page</u> .					
<u>OCIE Risk Alert: Cybersecurity Ransomware Alert July 10, 2020</u>	Cybersecurity	<u>OCIE Risk Alert: Cybersecurity Ransomware Alert</u> July 10, 2020	Not Applicable	OCIE's Risk Alert provides observations to assist firms in the enhancement of their cybersecurity preparedness, including, ransomware attacks.	Immediately	None though firms are advised to consider the advice and guidance provided in OCIE's Risk Alert.

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<u>No Action Letters of particular relevance to Broker-Dealers</u>						
None of Significance						
Selected Enforcement and Litigation Actions						
<u>SEC Press Release 2020-159</u>	Sales Practices Municipal Securities Underwritings Retail Priority Violations	Broker-Dealer to Pay \$10 Million for Violating Rules Which Give Priority To Retail Investors in Municipal Offerings	Various	The Press Release states that the firm improperly allocated bonds intended for retail customers to non-retail parties.	Immediately	None
Other matters of interest including OCIE materials and other SEC <u>press releases</u>, SEC <u>public statements</u>, and FINRA <u>press releases</u>						
<u>FINRA 2020 Industry Snapshot</u>	The 2020 Industry Snapshot provides a high-level overview of the brokerage industry, ranging from the number of FINRA-registered individuals to the overall revenues of firms, and from trading activity to how firms market their products and services.					

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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 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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