

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 August 2020

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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>						
Regulatory Notice 20-28	Sales Practices Securities Futures Risk Disclosure Statement	Update to Security Futures Risk Disclosure Statement and Supplement	FINRA Rule 2370(b)(11)(A) (Securities Futures)	The Notice informs members of updates to the Securities Futures Risk Disclosure Statement and Supplement and consequently, the obligation of member firms to deliver the updated statement and	Implementation Date: September 14, 2020	Member firms that approve customers for trading in security futures should take steps to provide the updated statement and supplement to such customers in accordance

* Other rules may also apply

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				supplement to each customer having an account approved for security futures trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The updated Statement is accessible on FINRA's website .		with the applicable rule.

FINRA Regulatory Notices

Regulatory Notice 20-31	Consolidated Audit Trail (CAT) Supervision	FINRA Reminds Firms of Their Supervisory Responsibilities Relating to CAT	FINRA Rule 3110 (Supervision) FINRA 6800 Series (Consolidated Audit Trail Compliance Rule)	The Notice provides guidance on requirements relating to the Consolidated Audit Trail (CAT), and FINRA Rule 6800 Series (the "CAT Rules") and, in particular, reminds members of their supervisory responsibilities under the CAT Rules and FINRA's Supervision Rule (Rule 3110).	Immediately	Members may wish to consider the applicability of the guidance provided in the Notice to their own practices and operations.
Regulatory Notice 20-30	Cybersecurity Imposter Websites	Fraudsters Using Registered Representatives Names to Establish Imposter Websites	Not Applicable	The Notice warns that several firms have recently informed FINRA that malicious actors are using registered representatives' names and other information to establish websites ("imposter websites") that	Immediately	Member firms are advised to consider the guidance set forth in the Notice, including monitoring for imposter websites.

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				appear to be the representatives' personal sites and are also calling and directing potential customers to use these imposter websites.		
Regulatory Notice 20-29	Fixed Income Securities Corporate Bonds Internalization Pennying	FINRA Requests Comment on the Practice of Pennying in the Corporate Bond Market	None	The Notice requests comment on the practice of internalizing customer trades in the corporate bond market after obtaining auction responses, commonly known as "pennying."	Comment Period Expires: October 16, 2020	None. The Notice is for the purpose of soliciting comments on the proposal.
Regulatory Notice 20-28	Sales Practices Securities Futures Risk Disclosure Statement	Update to Security Futures Risk Disclosure Statement and Supplement	FINRA Rule 2370(b)(11)(A) (Securities Futures)	The Notice informs members of updates to the Securities Futures Risk Disclosure Statement and Supplement and consequently, the obligation of member firms to deliver the updated statement and supplement to each customer having an account approved for security futures trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The updated Statement is accessible on FINRA's website .	Implementation Date: September 14, 2020	Member firms that approve customers for trading in security futures should take steps to provide the updated statement and supplement to such customers in accordance with the applicable rule.

* Other rules may also apply

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Regulatory Notice 20-27	Cybersecurity Fake FINRA web site	FINRA Alerts Firms to Use of Fake FINRA Domain Name	Not Applicable	The Notice warns of a fake FINRA website - www.finnra.org – that is distinguished from the legitimate FINRA site by the presence of an extra “n” in the domain name.	Immediately	While this fake site has already been taken down, the Notice and the issue raised thereby, offers Firms an opportunity to remind their associated persons of the importance of verifying the legitimacy of any suspicious email prior to responding to it, opening any attachments or clicking on any embedded links.
Regulatory Notice 20-26	LIBOR	FINRA Shares Practices Firms Implemented to Prepare for the LIBOR Phase-out	Not Applicable	The Notice provides guidance to assist member firms in responding to the phase out of the LIBOR benchmark by sharing practices observed by FINRA among member firms. Potential risks identified by the Notice include risks relating to compliance requirements, adverse financial and accounting issues, disruptions to business operations and litigation.	Libor Phase Out Date: December 31, 2021	Member firms who may be exposed to risks on account of the phase out of the LIBOR benchmark may want to compare the steps they are taking to the guidance shared in the Notice.
Other FINRA Notices						
None of Significance						

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<u>FINRA Rule Filings</u>						
SR-FINRA-2020-025 34-89703	Sales Practices Securities Futures Risk Disclosure Statement	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Security Futures Risk Disclosure Statement	FINRA Rule 2370(b)(11)(A) (Securities Futures)	The Notice amends the Securities Futures Risk Disclosure Statement and Supplement and consequently, the obligation of member firms to deliver the updated statement and supplement to each customer having an account approved for security futures trading or, in the alternative, not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction. The updated Statement is accessible on FINRA's website .	Implementation Date: September 14, 2020	Member firms that approve customers for trading in security futures should take steps to provide the updated statement and supplement to such customers in accordance with the applicable rule.
SR-FINRA-2020-024 34-89679	Order Audit Trail System	Notice of Filing of a Proposed Rule Change to Delete the FINRA Order Audit Trail System (OATS) Rules	FINRA Rule 4554 (Alternative Trading Systems — Recording and Reporting Requirements of Order and Execution Information for NMS Stocks) FINRA Rule 7400 (Order Audit Trail System)	The Notice proposes to delete OATS reporting once member firms have transitioned to reporting pursuant to the Consolidated Audit Trail.	Comment Due Date: 21 days after publication in the Federal Register	None The Notice is for the purpose of obtaining comments on a change to an existing rule.
<u>SEC Rule Filings</u>						

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33-10824	Securities Offerings Private Placements Regulation D Accredited Investor	Amending the “Accredited Investor” Definition	Securities Act Rule 144A (17 C.F.R. 230.144A) (Private Resales of Securities to Institutions) Securities Act Regulation D (17 C.F.R. 230.500 - 508) (Rules Governing the Limited Offer and Sales of Securities Without Registration Under the Securities Act of 1933)	The Order expands the “accredited investor” and the “qualified institutional buyer” definitions. An overview of the changes made by the Order is available here .	Effective Date: 60 days after publication in the Federal Register	Firms that engage in transactions in reliance on Regulation D or Rule 144A should consider updating their policies and procedures to take advantage of the expanded “accredited investor” and “qualified institutional buyer” definitions.
34-89632	Consolidated Audit Trail (CAT)	Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security	Consolidated Audit Trail NMS Plan (the “CAT NMS Plan”)	The Proposal would amend the CAT NMS Plan in a number of respects to enhance the security of data obtained under the CAT NMS Plan.	Comment Due Date: 45 days after publication in the Federal Register.	None. The Proposal is for the purpose of soliciting comments on the proposed amendments.
34-89659	Regulation SHO Physical Securities Locate Close Out	Order Granting Exemptions From Certain Rules Related to the Sale and Delivery of Physical Securities under Regulation SHO Related to COVID-19	Regulation SHO (17 C.F.R. 242.200 et seq.) (Regulation of Short Sales)	In light of the fact that DTCC has intermittently suspended physical securities processing services due to ongoing concerns related to the effects of COVID-19, the SEC is providing certain exemptive relief from the “locate” and close-out requirements of Regulation SHO.	Immediately	None The Order provides exemptive relief that firms but imposes no new obligations on firms that do not avail themselves of such relief.

FINRA Guidance

* Other rules may also apply

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COVID-19 Guidance and Relief	Firms are urged to monitor updates to the guidance and relief set forth on FINRA's COVID-19 Page .					
Frequently Asked Questions Related to Regulatory Relief Due to the Coronavirus Pandemic	Registrations Qualification Examinations Principals Operations Professionals	Qualification Examinations	FINRA Rule 1210 (Registration Requirements) FINRA Rule 1220 (Registration Categories)	FINRA has adopted temporary Supplementary Material .07 under FINRA Rule 1220 and Supplementary Material .012 under FINRA Rule 1210 providing, respectively, that individuals who were designated to function as Operations Professionals or Principals prior to September 3, 2020 will be given until December 31, 2020 to pass the appropriate examination.	Immediately	None
SEC Guidance						
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 .					
OCIE Risk Alert: Compliance Risks and Considerations for Broker-Dealers and Investment Advisers August 12, 2020	Compliance Supervision COVID-19	Select COVID-19 Compliance Risks and Considerations for Broker-Dealers and Investment Advisers*	Not Applicable	OCIE's Risk Alert provides observations to assist firms in addressing select compliance and other risks arising out of COVID-19.	Immediately	None though firms are advised to consider the advice and guidance provided in OCIE's Risk Alert.
No Action Letters of particular relevance to Broker-Dealers						
None						
Selected Enforcement and Litigation Actions						

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
SEC Press Release 2020-178	Anti-Money Laundering (AML) Suspicious Activity Reports (SARs) Microcap Securities	SEC Charges Brokerage Firm With Repeatedly Failing to File Suspicious Activity Reports	Various	This is one of a long line of cases involving failure to file SARS relating U.S. microcap securities trades the firm executed on behalf of its customers. The firm also settled parallel actions with FINRA and the CFTC and paid aggregate fines of \$38 million.	Immediately	None. If they have not already done so, firms that facilitate transactions by customers in microcap securities may want to revisit their policies and procedures governing SARs review and reporting with respect to such transactions.

Other matters of interest including OCIE materials and other SEC press releases, SEC public statements, and FINRA press releases

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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