

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 September 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>						
Securities Exchange Act Release 34-89891 September 16, 2020	Trading OTC Quotes	Publication or Submission of Quotations Without Specified Information	SEA Rule 15c2-11 (Initiation or Resumption of Quotations without Specific Information)	The Order approves amendments to the rule governing the publication of quotations for securities in a quotation medium other than a national securities exchange.	Comment Due Date: 60 days after publication in the Federal Register	Firms that publish OTC quotations should compare their current procedures to the amendment's requirements.

* Other rules may also apply

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<u>FINRA Regulatory Notices</u>						
Regulatory Notice 20-34	Sales Practices Financial Exploitation Senior Investors	Proposed Amendments to FINRA Rule 2165 and Retrospective Rule Review Report	FINRA Rule 2165 (Financial Exploitation of Specified Adults)	The Notice requests comment on proposed amendments to FINRA Rule 2165 (Financial Exploitation of Specified Adults), which were suggested by FINRA's earlier retrospective review. These changes would extend the hold period and allow temporary holds on securities transactions to further address suspected financial exploitation of senior investors.	Comment Period Expires: December 4, 2020	None. The Notice is for the purpose of soliciting comments on the proposal.
Regulatory Notice 20-33	Qualification Examinations Cheating Misbehavior	FINRA Requests Comment on a Proposed New Expedited Proceeding Rule for Failures to Comply With the FINRA Qualification Examinations Rules of Conduct and Proposed Amendments to the Registration Requirements Rule and the Eligibility Proceedings Rules	Not Applicable	The Notice requests comment on proposed formal procedures for bringing actions against non-associated persons who cheat or misbehave during a FINRA qualification examination. The proposed procedures are intended to fill a	Comment Period Expires: November 23, 2020	None. The Notice is for the purpose of soliciting comments on the proposal.

* Other rules may also apply

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				gap in FINRA's rules as, currently, they do not allow FINRA to bring a disciplinary action against a person who engages in the covered activity before associating with a firm.		
Regulatory Notice 20-32	Identity Theft/ Cyber Crime New Account Fraud Account Take Over Schemes Options Trading	FINRA Reminds Firms to Be Aware of Fraudulent Options Trading in Connection With Potential Account Takeovers and New Account Fraud	Not Applicable	The Notice warns firms that FINRA has observed an increase in fraudulent options trading being facilitated by account takeover schemes and new account fraud.	Immediately	Member firms may want to increase their vigilance with respect to the identified activities. Firms may also be advised to compare their security practices and procedures regarding such schemes against the guidance provided in the Notice. Firms may also find it useful to compare their existing procedures against the regulatory obligations outline in the Notice in the event potential activity is identified.
Other FINRA Notices						
None of Significance						

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<u>FINRA Rule Filings</u>						
SR-FINRA-2020-031 34-90067	Trading Inter-dealer Quotation System OTC Equity Securities Quotations	Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Delete the Rules Related to the OTC Bulletin Board Service	<u>Proposed Rule 6439</u> (Requirement for Member Inter-Dealer Quotation Systems)	The proposed rule would delete the rules related to the OTC Bulletin Board Service and terminate its operations while also enhancing the regulation of quotations in OTC Equity Securities by adopting new requirements for member inter-dealer quotation systems.	Comment Due Date: 21 days from the date of publication in the Federal Register.	None The rule filing is for the purpose of soliciting comments on the proposed rule.
SR-FINRA-2020-030 34-90000	Arbitration Expungement	Notice of Filing of a Proposed Rule Change to Amend the Codes of Arbitration Procedure Relating to Requests to Expunge Customer Dispute Information, Including Creating a Special Arbitrator Roster to Decide Certain Expungement Requests	Various	The proposal would overhaul the process relating to expungement requests.	Comments Due Date: 21 days after publication in the Federal Register	None The rule filing is for the purpose of soliciting comments on the proposed rule.
SR-FINRA-2020-029 34-89973	Trade Reporting Time Reporting Increments	Notice of Filing of Proposed Rule Change Relating to Granularity of Timestamps in Trade Reports Submitted to FINRA's Equity Trade Reporting Facilities	Various	The proposal would conform the granularity of timestamps with respect to FINRA's equity trade reporting rules to the CAT reporting rules. Current equity trade	Comments Due Date: 21 days after publication in the Federal Register	None The rule filing is for the purpose of soliciting comments on the proposed rule.

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				reporting rules require members to report time fields in seconds and milliseconds, if captured by the member's system. Conformance to the CAT reporting rules would require reporting in milliseconds or such finer increments, up to nano seconds, captured by the member's system.		
SR-FINRA-2020-028 34-89867	Membership Application Continuing Membership Application	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Standardized Membership Application Forms – Form NMA and Form CMA – to Conform to Amendments to the Membership Application Program Rules as Described in SR-FINRA-2019-030	Various	The proposed rules would revise the membership application forms to reflect recent changes in FINRA rules that consider pending or avoided arbitration rulings as part of the membership application process and continuing membership application process.	Comments Due Date: 21 days after publication in the Federal Register	None The rule filing is for the purpose of soliciting comments on the proposed rule.
SR-FINRA-2020-027 34-89737	Hearings Membership Application Reviews	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to	FINRA Rule 1015 (Review [of Membership Decisions] by the National	The notice grants, on a temporary basis, authority to FINRA's	Effective immediately and through December 31, 2020 or until	None The Notice relates to the conduct of certain hearings

* Other rules may also apply

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	Eligibility Proceedings Enforcement Matters	Temporarily Amend FINRA Rules 1015, 9261, 9524 and 9830 to Permit Hearings Under Those Rules to Be Conducted by Video Conference	Adjudicatory Council) FINRA Rule 9261(Evidence and Procedure in Hearing) FINRA Rule 9524 (National Adjudicatory Council Considerations) FINRA Rule 9830 (Hearing)	Office of Hearing Officers and the National Adjudicatory Council to conduct hearings in connection with membership application program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference if warranted by the current COVID-19 related public health risk.	the conclusion of any extension thereof.	by video conference.
SR-FINRA-2020-026 34-89732	Principals Operations Professionals Qualification Examinations	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Temporarily Adopt (1) Supplementary Material .12 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under FINRA Rule 1210 and (2) Supplementary Material .07 (Temporary Extension of the Limited Period for	FINRA Rule 1210 (Registration Requirements)	The Notice extends the 120 day period in which certain individuals can function as a principal or Operations Professional without having passed an appropriate qualification examination through December 31, 2020.	Effective immediately.	None. The Notice provides a temporary exception from certain FINRA registration requirements.

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		Persons to Function as Operations Professionals) under FINRA Rule 1220.				
<u>SEC Rule Filings</u>						
Securities Exchange Act Release 34-90019 September 28, 2020	Trading Regulation ATS U.S. Government Securities	Regulation ATS for ATSS that Trade U.S. Government Securities, NMS Stock, and Other Securities; Regulation SCI for ATSS that Trade U.S. Treasury Securities and Agency Securities; and Electronic Corporate Bond and Municipal Securities Markets	Regulation ATS (17 C.F.R. §242.300 et seq.) (Regulation ATS)	The Proposal would eliminate the exemption from compliance with Regulation ATS for an ATS that limits its securities activities to government securities or repurchase and reverse repurchase agreements on government securities.	Comment Due Date: 60 days after publication in the Federal Register	None. The Proposal is for the purpose of soliciting comments on the proposed amendments.
Securities Exchange Act Release 34-89963 September 23, 2020	Whistleblowers	Whistleblower Program Rules	Securities Whistleblower Incentives and Protections (17 C.F.R. §240.21F-1 et seq.)	The Order makes a number of changes to the SEC's whistleblower program, including language that clarifies the Commission's broad discretion when determining award amounts.	Effective Date: 30 days after publication in the Federal Register.	None. The Proposal relates to whistleblower and does not impose any obligations on firms.
Securities Exchange Act Release 34-89891 September 16, 2020	Trading OTC Quotes	Publication or Submission of Quotations Without Specified Information	SEA Rule 15c2-11 (Initiation or Resumption of Quotations without Specific Information)	The Order approves amendments to the rule governing the publication of quotations for securities in a quotation medium other	Comment Due Date: 60 days after publication in the Federal Register	Firms that publish OTC quotations should compare their current procedures to the amendment's requirements.

* Other rules may also apply

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				than a national securities exchange.		
<u>FINRA Guidance</u>						
COVID-19 Guidance and Relief	Firms are urged to monitor updates to the guidance and relief set forth on FINRA's COVID-19 Page .					
Implementation Guidance for Public Offerings Subject to FINRA Rule 5110	Corporate Finance Rule	Implementation Guidance for Public Offerings Subject to FINRA Rule 5110	FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements)	The Guidance makes clear that in connection with ongoing reviews and offerings, participating members must comply with the amended Rule 5110 as of September 16, 2020 regardless of when the offering was filed or declared effective or when a member received a No Objection Letter.	Effective Date: September 16, 2020	Members must comply with the amended version of FINRA Rule 5110.
Filing Guidance - Public Offering Review	Corporate Financing Rules Public Offerings Filings	Filing Guidance – Public Offering Review	FINRA Rule 2310 (Direct Participation Programs) FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) FINRA Rule 5121 (Public Offerings of Securities with Conflicts of Interest)	The Guidance provides detailed information regarding the obligations of firms that participate in public offerings of securities, including their filing obligations, use of the public offering filing system, conflicts of	Immediately	None. The referenced material provides guidance as to already existing requirements.

* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				interest and FINRA's review program.		
Interpretive Letter	Sales Practices Institutional Communications Marketing Materials Private Funds Performance Information	Interpretive Letter to Jason P. Ellison, Foreside Fund Services, LLC	FINRA Rule 2210 (Communications with the Public)	Subject to its terms and conditions, the letter allows the use of related performance information in communications concerning private unregistered funds excluded from the definition of "investment company" under section 3(c)(1) of the Investment Company Act of 1940 ("ICA") ("3(c)(1) Funds") that are distributed solely to institutional investors as defined in FINRA Rule 2210(a)(4).	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 .
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No Action Letters of particular relevance to Broker-Dealers

[Financial Industry Regulatory Authority \(ATS Role in the Settlement of Digital Asset Security Trades\)](#) September 25, 2020. The no-action letter permits a new settlement method for matched digital asset securities trades on an ATS though such. For further information see the author's [briefing](#), which provides a detailed overview of the no-action letter.

Selected Enforcement and Litigation Actions

* Other rules may also apply

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SEC Press Release 2020-238	Short Sales Reg. SHO Aggregation Units	Brokerage Firm Agrees to Pay \$5 Million for Reg. SHO Violations in Prime Brokerage Sw aps Business	Regulation SHO (Regulation of Short Sales)	The enforcement action found that two aggregation units set up by the firm were not independent and did not have separate trading strategies and, therefore, did not qualify for the Reg. SHO exemption permitting broker-dealer aggregation units to separate calculate their long and short positions.	Immediately	None

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

None

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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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