

# 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 December 2020

By Glen Barrentine

## Internallinks

<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
<b><u>This month's item(s) of note</u></b>						
<a href="#">SEC Press Release 2020-340</a> December 23, 2020	Digital Asset Securities Custody	SEC Issues Statement and Requests Comment Regarding the Custody of Digital Asset Securities by Special Purpose Broker-Dealers	<a href="#">SEA Rule 15c3-3</a> (Customer protection – reserve and custody of securities)	The “Statement” appears to grant no-action relief to brokerage firms that custody digital assets on behalf of customers provided such firms satisfy the	Immediately	None

\* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				Statement's requirements.		
<a href="#">No Action Letter Dated December 23, 2020 to Stephanie R. Nicolas, WilmerHale, on Behalf of SIFMA</a>	Regulation Best Interest  Form CRS  Institutional Family Offices  Retail Customers	Status of Institutional Family Offices for Purposes of Regulation Best Interest, SEC File No. S7-07-18 (Sept. 10, 2019) and Form CRS Relationship Summary, SEC File No. S7-08-18 (Sept. 10, 2019).	<a href="#">Regulation Best Interest</a>  <a href="#">Form CRS</a>	The no-action letter allows treatment of "Institutional Family Offices" as falling outside the "retail customer" definition for purposes of Regulation BI and Form CRS. Generally speaking, an Institutional Family Office has one or more experienced securities or financial services professionals, manages total assets of \$50 million or more, does not rely on the broker-dealer for recommendations and has professionals who are independent representatives of their family clients.	Immediately	None  The no-action provides limited relief from the requirements of Reg. BI and Form CRS but does not impose any additional obligations on firms.

**FINRA Regulatory Notices**

<a href="#">Regulatory Notice 21-01</a>	Fees  Registration	Final Statements for Broker-Dealers, Investment Adviser Firms, Agents and Investment Adviser Representatives, and Branches	Not Applicable	This Notice is provided to help firms review, reconcile and respond to Final Statements in E-Bill and view the reports available in CRD/IARD for the annual	Payment Deadline:  January 22, 2021	Member firms should comply with the payment deadline.
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\* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				registration renewal process.		
<a href="#">Regulatory Notice 20-43</a>	Trade Reporting and Compliance Engine (TRACE)  Fixed Income  US Treasury Securities	FINRA Requests Comment on Enhancements to TRACE Reporting for U.S. Treasury Securities	Various	This Notice solicits comments on proposed changes to TRACE reporting for U.S. Treasury securities.	Comment Period Expires: February 22, 2021	None  This Notice is for the purpose of soliciting comments on enhancements to the information reported to TRACE with regard to U.S. Treasury Securities.
<a href="#">Regulatory Notice 20-42</a>	Retrospective Rule Review  Pandemic	FINRA Seeks Comment on Lessons From the COVID-19 Pandemic	Various	FINRA is seeking comment on whether it should consider changes to its rules, operations or administrative processes to address lessons learned during the pandemic or to address anticipated long-term impacts of the pandemic on member firms and investors. While the request is general in nature, the Notice also identifies a number of particular areas of interest.	Comment Period Expires: February 16, 2021	None  The Notice requests comments to assist FINRA in its considerations of whether changes to its existing rules and processes may be needed.
<a href="#">Regulatory Notice 20-41</a>	Trade Reporting  Equity Trade Reporting Facility	FINRA Amends Its Equity Trade Reporting Rules Relating to Timestamp Granularity	Various	The Notice announces an amendment of FINRA rules to require time fields in trade reports submitted to a	Effective Date: November 15, 2021 (ADF and TRFs),	Firms that report to a FINRA equity trade reporting facility should ensure that they are able to

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				FINRA equity trade reporting facility to use the same timestamp granularity as is required of the Firm when reporting to the Consolidated Audit Trail (CAT).	November 14, 2022 (ORF)	satisfy the newly required timestamp granularity by the appropriate effective dates.

**Other FINRA Notices**

<a href="#">Information Notice – 12/1/20</a>	Margin and Possession or Control  Extensions of Time	2021 Holiday Margin Extension	<a href="#">Regulation T Rule 220.4</a> (Margin Account)  <a href="#">Regulation T Rule 220.8</a> (Cash Account Account)  <a href="#">SEA Rule 15c3-3</a> (Customer Protection – Reserve and Custody of Securities)	The Notice sets forth the due dates for filings of extensions of time under the margin rules and SEA Rule 15c3-3 prior or after holidays in 2021 when banks or exchanges are closed.	Immediately	Firms that carry customer accounts and/or extend margin are advised to make note of the referenced due dates.
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**FINRA Rule Filings**

<a href="#">SR-FINRA-2020-031</a>  <a href="#">34-90824</a>	Trading  Inter-dealer Quotation System  OTC Equity Securities  Quotations	Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and	<a href="#">Proposed Rule 6439</a>  (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.
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\* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
		Rescind the Rules Related to the OTC Bulletin Board Service				
<a href="#">SR-FINRA-2020-045</a> <a href="#">34-90778</a>	BrokerCheck Disclosure	Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)	<a href="#">FINRA Rule 8312</a> (FINRA BrokerCheck Disclosure)	The proposed rule amendment would make information about formally registered individuals subject to a final regulatory action available on BrokerCheck on a permanent basis only for those individuals who have been registered on or after August 16, 1999 and would exclude information from BrokerCheck pertaining to deceased individuals.	Comment Due Date:  21 days from publication in the Federal Register	None  The Notice is for the purpose of soliciting comments on the proposed amendments.
<a href="#">SR-FINRA-2020-044</a> <a href="#">34-90728</a>	Trading  FINRA Trade Reporting Facilities  Credits  Non-Retail Participants	Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Securities Transaction Credits Applicable to FINRA/Nasdaq TRF Participants	<a href="#">FINRA Rule 7610A</a> (Securities Transaction Credit)	The Notice amends the securities transaction credits applicable to non-Retail Participants that use the FINRA/Nasdaq Trade Reporting Facility Carteret and the FINRA/Nasdaq Trade Reporting Facility/ Chicago.	Immediately Effective	None  The Notice modifies certain credits that are available on certain trade reporting facilities.
<a href="#">SR-FINRA-2020-030</a> <a href="#">34-90734</a>	Arbitration  Expungement	Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether	Various	The proposal would overhaul the process relating to	Comments Due Date:  21 days after publication in	None  The rule filing is for the purpose of soliciting comments on

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
		to Approve or Disapprove the Proposed Rule Change, as modified by Amendment No. 1, 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		expungement requests.	the Federal Register	the proposed rule.
<a href="#">SR-FINRA-2020-035</a> <a href="#">34-90705</a>	Fees Arbitration	Order Approving a Proposed Rule Change to Amend the FINRA Codes of Arbitration Procedure to Increase Arbitrator Chairperson Honoraria and Certain Arbitration Fees	<a href="#">FINRA 12000 Series Rules –</a> Code of Arbitration Procedure for Customer Disputes  <a href="#">FINRA 13000 Series Rules –</a> Code of Arbitration Procedure for Industry Disputes	The Order approves a rule change to increase arbitrator chairperson honoraria and certain arbitration fees.	Effective Date:  To be announced.	None  The Order approves arbitration related fee changes.
<a href="#">SR-FINRA-2020-034</a> <a href="#">34-90646</a>	Trade Reporting Trade Reporting and Compliance Engine (TRACE)  Agency Pass-through MBS or SBA-Backed ABS Traded in Specified Pools (the “Covered Securities”)	Order Approving Proposed Rule Change to Modify TRACE Dissemination Protocols for Agency Pass-Through MBS or SBA-Backed ABS Traded in Specified Pool Transactions	Not Applicable	The Order approves modified dissemination protocols regarding the Covered Securities.	Effective Date:  TBA in a Regulatory Notice to be published no later than 60 days following approval (December 11, 2020) and to be effective no	None  The Order affects the relevant information publicly disseminated by FINRA.

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					later than 270 days following publication of the Regulatory Notice.	
<a href="#">SR-FINRA-2020-011</a> <a href="#">34-90635</a>	Supervision	Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers with a Significant History of Misconduct	Various	The Order approves rule changes 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 and requiring firms to adopt heightened supervisory procedures when a disciplinary matter is appealed or an eligibility request is under review. These changes also provide for the disclosure on BrokerCheck of a firm's status as a "taping firm", 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	Effective Date:  To be announced.	None  While the amendments may impact firms in a number of ways, the amendments do not require firms to make changes to their processes and procedures.

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				history of certain criminal or other events.		
<a href="#">SR-FINRA-2020-042</a> <a href="#">34-90619</a>	Enforcement  Member Application and Associated Person Registration  OTC Trading	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027	Various	The Order extends the expiration date of certain temporarily amendments of FINRA rule requirements relating to the enforcement process. These temporary 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	New Extension Date:  April 30, 2021.	None  The Order extends the expiration date of certain currently effective temporary amendments.

\* Other rules may also apply



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				Adjudicatory Council ("NAC") to be conducted by video conference.		
<a href="#">SR-FINRA-2020-042</a> <a href="#">34-90619</a>	Hearings Membership Application Reviews Eligibility Proceedings Enforcement Matters	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Date of the Temporary Amendments Set Forth in SR-FINRA-2020-015 and SR-FINRA-2020-027	<a href="#">FINRA Rule 1015</a> (Review [of Membership Decisions] by the National Adjudicatory Council)  <a href="#">FINRA Rule 9261</a> (Evidence and Procedure in Hearing)  <a href="#">FINRA Rule 9524</a> (National Adjudicatory Council Considerations)  <a href="#">FINRA Rule 9830</a> (Hearing)	The Order extends the expiration date of certain temporarily amendments of FINRA rules that grant, on a temporary basis, authority to FINRA's 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.	New Extension Date: April 30, 2021.	None  The Order extends the expiration date of certain currently effective temporary amendments.
<a href="#">SR-FINRA-2020-043</a> <a href="#">34-90617</a>	Principals Operations Professionals Qualification Examinations	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-2020-026 from December 31,	<a href="#">FINRA Rule 1210</a> (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	New Extension Date: April 30, 2021.	None  The Notice extends existing, temporary relief.

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		2020 to April 30, 2021		appropriate qualification examination through April 30, 2020.		

**Relevant SEC Rule Filings**

Securities Act Release  <a href="#">33-10911</a>  December 22, 2020	Securities Sales Restricted and Control Securities  Market-adjustable securities of non-listed issuers	Rule 144 Holding Period and Form 144 Filings	<a href="#">Rule 144</a>  (Persons deemed not to be engaged in a distribution and therefore not underwriters)	The Proposal would amend Rule 144 to provide that the holding period on the covered securities would not begin until the securities are acquired upon the conversion or exchange.	Comment Period:  60 days after publication in the Federal Register.	None  The Proposal is for the purpose of soliciting comments on the proposed amendments.
Securities Act Release  <a href="#">34-90610</a>  December 9, 2020	National Market System  Market Data	Market Data Infrastructure	<a href="#">Regulation NMS</a>  (Regulation of the National Market System)	The Order amends Regulation NMS to expand the content of NMS information that is required to be collected, consolidated, and disseminated and to foster a competitive environment for the dissemination of NMS information via a decentralized consolidation model with competing consolidators.	Effective Date:  60 days after publication in the Federal Register	While the focus of the Order is primarily on the exchanges and SIPs, it is likely that the Order's expansion of the content collected under Regulation NMS will have a downstream impact market makers and other reporting brokers.

**FINRA Guidance**

<a href="#">COVID-19 Guidance and Relief</a>	Firms are urged to monitor updates to the guidance and relief set forth on <a href="#">FINRA's COVID-19 Page</a> .
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<a href="#">Extension of Exam Enrollment Windows to March 2021</a>  December 2020	Examinations	<a href="#">Extension of Exam Enrollment Windows to March 2021</a>	Various	FINRA is extending the enrollment window for examinations that are not available online, such as the Series 24 and 53 exams, to March 31, 2021.	Immediately	None  The guidance extends certain examination windows to March 31, 2021.

**SEC Guidance**

<a href="#">COVID-19 Guidance and Relief</a>	Firms are urged to monitor updates to the guidance and relief set forth on the <a href="#">SEC's COVID-19 page</a> .
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**No Action Letters of particular relevance to Broker-Dealers**

<a href="#">No Action Letter Dated December 23, 2020 to Stephanie R. Nicolas, WilmerHale, on Behalf of SIFMA</a>	Regulation Best Interest  Form CRS  Institutional Family Offices  Retail Customers	Status of Institutional Family Offices for Purposes of Regulation Best Interest, SEC File No. S7-07-18 (Sept. 10, 2019) and Form CRS Relationship Summary, SEC File No. S7-08-18 (Sept. 10, 2019).	<a href="#">Regulation Best Interest</a>  <a href="#">Form CRS</a>	The no-action letter allows treatment of “Institutional Family Offices” as falling outside the “retail customer” definition for purposes of Regulation BI and Form CRS. Generally speaking, an Institutional Family Office has one or more experienced securities or financial services professionals, manages total assets of \$50 million or more, does not rely on the broker-dealer for recommendations and has professionals who are independent	Immediately	None  The no-action provides limited relief from the requirements of Reg. BI and Form CRS but does not impose any additional obligations on firms.
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				representatives of their family clients.		
<a href="#">No Action Letter Dated December 9, 2020 to Aseel M. Rabie, SIFMA</a>	Anti-Money Laundering Customer Identification Program Customer Due Diligence Reliance on Registered Investment Advisers	Request for No-Action Relief Under Broker-Dealer Customer Identification Program Rule (31 C.F.R. § 1023.220) and Beneficial Ownership Requirements for Legal Entity Customers (31 C.F.R. § 1010.230)	<a href="#">SEA Rule 17a-8</a> (Financial recordkeeping and reporting of currency and foreign transactions)	The no-action letter extends relief that allows a broker-dealer, subject to certain conditions, to rely upon customer identification determinations made by registered investment adviser as though the adviser were subject to an anti-money laundering program rule.	Immediately and through December 9, 2022	None  The no-action letter merely extends relief previously granted by the SEC.

**Other matters of interest including materials from the SEC’s Division of Examinations and other SEC [press releases](#), [SEC public statements](#), and FINRA [press releases](#)**

<a href="#">Risk Alert Observations from Examinations of Broker-Dealers and Investment Advisers: Large Trader Obligations</a>	Reporting Obligations Large Trader	<a href="#">Risk Alert Observations from Examinations of Broker-Dealers and Investment Advisers: Large Trader Obligations</a>	<a href="#">SEA Rule 13h-1</a> (Large Trader Reporting)	The Risk Alert provides observations and guidance that is relevant to broker-dealers that are themselves large traders under Rule 13h-1 and are required to file and update Form 13H as well as broker-dealers that carry accounts for a larger trader or an unidentified large trader.	Immediately	None  While the Risk Alert does not impose any new obligations on brokerage firms, firms that may be subject to requirements under SEA Rule 13h-1 are encouraged to review the Alert and compare the guidance provided therein to their current practices.
December 16, 2020		December 16, 2020				
<a href="#">SEC Press Release 2020-340</a>	Digital Asset Securities Custody	SEC Issues Statement and Requests Comment Regarding the	<a href="#">SEA Rule 15c3-3</a> (Customer protection – reserve and	The “Statement” appears to grant no-action relief to brokerage firms that	Immediately	None

\* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
December 23, 2020		Custody of Digital Asset Securities by Special Purpose Broker-Dealers	custody of securities)	custody digital assets on behalf of customers provided such firms satisfy the Statement's requirements.		

\* 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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