

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 February 2021

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>						
Regulatory Notice 21-05	Financial Reporting Annual Reports Small Firms	SEC Grants FINRA Request for 30-Day Filing Extension for Smaller Broker-Dealers	SEA Rule 17a-5(d) (Reports to be made by certain brokers and dealers)	The Notice describes a recent SEC Order that allows qualifying small firms an additional 30 days in which to file their annual financial reports under SEA Rule 17a-5(d) . Firms that wish to take	Effective Date: Applicable beginning with the current filing cycle for December 31, 2020 and January 31,	None. The Notice describes a SEC Order that provides qualifying firms with a thirty day extension in which to file their annual

* Other rules may also apply

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				advantage of this extension must file a notice with FINRA and otherwise comply with the terms and conditions of the SEC's Order.	2021 annual reports.	financial reports.
Regulatory Notice 21-03	Supervision Fraud Low -Priced Securities Red Flags	FINRA Urges Firms to Review Their Policies and Procedures Relating to Red Flags of Potential Securities Fraud Involving Low -Priced Securities	Various Anti-fraud provisions	The Notice provides an overview of firms obligations to surveil for potential fraud involving low -priced securities, while also providing an extensive list of possible red flags.	Immediately	None though firms may be advised to consider their relevant procedures and practices in light of the guidance provided.

FINRA Regulatory Notices

Regulatory Notice 21-06	Municipal Securities Trade Reporting Fee	2021 GASB Account Support Fee to Fund the Governmental Accounting Standards Board	Section 14 of Schedule A to FINRA's By-Laws	The Notice announces the estimated GASB Accounting Support Fee for 2021, which is assessed on the par value of municipal security trades.	Immediately	None.
Regulatory Notice 21-05	Financial Reporting Annual Reports Small Firms	SEC Grants FINRA Request for 30-Day Filing Extension for Smaller Broker-Dealers	SEA Rule 17a-5(d) (Reports to be made by certain brokers and dealers)	The Notice describes a recent SEC Order that allows qualifying small firms an additional 30 days in which to file their annual financial reports under SEA Rule 17a-5(d) . Firms that wish to take advantage of this extension must file a notice with	Effective Date: Applicable beginning with the current filing cycle for December 31, 2020 and January 31, 2021 annual reports.	None. The Notice describes a SEC Order that provides qualifying firms with a thirty day extension in which to file their annual financial reports.

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				FINRA and otherwise comply with the terms and conditions of the SEC's Order.		
Regulatory Notice 21-04	Fees Arbitration	FINRA Amends Arbitration Codes to Increase Arbitrator Chairperson Honoraria and Certain Arbitration Fees	FINRA 12000 Series Rules – Code of Arbitration Procedure for Customer Disputes FINRA 13000 Series Rules – Code of Arbitration Procedure for Industry Disputes	The Notice announces the effective date of changes to arbitrator chairperson honoraria amounts and certain arbitration fees.	Effective Date: April 19, 2021	None. The Order approves arbitration related fee changes.
Regulatory Notice 21-03	Supervision Fraud Low -Priced Securities Red Flags	FINRA Urges Firms to Review Their Policies and Procedures Relating to Red Flags of Potential Securities Fraud Involving Low -Priced Securities	Various Anti-fraud provisions	The Notice provides an overview of firms obligations to surveil for potential fraud involving low -priced securities, while also providing an extensive list of possible red flags.	Immediately	None though firms may be advised to consider their relevant procedures and practices in light of the guidance provided.
Regulatory Notice 21-02	Trade Reporting Trade Reporting and Compliance Engine (TRACE) Agency Pass-through MBS or SBA-Backed ABS Traded in Specified Pools (the “Covered Securities”)	FINRA Modifies TRACE Dissemination Protocols for Specified Pool Transactions	Not Applicable	This Notice announces the effective date of recently approved modified dissemination protocols regarding the Covered Securities.	Effective Date: May 17, 2021	None.

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<u>Other FINRA Notices</u>						
Information Notice – 2/16/21	Fees Section 31 Fees	New Rate for Fees paid Under Section 31 of the Exchange Act	SEA Section 31 (Transaction Fees)	The Notice announces the Section 31 fee rate applicable to specified securities transactions on an exchange and over-the-counter market has decreased from its current rate of \$22.10 per million dollars in transactions to a new rate of \$5.10 per million dollars in transactions. There is no change in the assessment on security futures transactions. This reduction reflects the substantially higher dollar amount of covered sales, beginning March 2020.	Effective Date: February 25, 2021	None. The Notice announces the lower of Section 31 fees.
Information Notice – 2/3/21	Options Exercise Cut-Off Time	Exercise Cut-Off Time for Expiring Options	FINRA Rule 2360 (Options)	The Notice reminds members who are holding expiring options that they have until 5:30 p.m. (ET) on the day of expiration to make a final exercise decision to exercise the options. The	Immediately	None. The Notice does not impose any new obligations upon members.

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				Notice also discusses when options will be automatically exercised in the absence of an exercise notice from a member.		
<u>FINRA Rule Filings</u>						
SR-FINRA-2020-037 34-91070	Administrative National Adjudicatory Council Membership Grounds for Removal	Order Approving Proposed Rule Change to Amend the By-Laws of FINRA Regulation, Inc. to Align the Grounds for Member Removal from the NAC with an Existing Provision in the FINRA By-Laws	Various	The Order approves amendments to the By-Laws of FINRA Regulation, Inc., FINRA's regulatory subsidiary, to align the grounds for member removal from the National Adjudicatory Council with existing FINRA By-Laws related to the removal of a FINRA governor from FINRA's board of governors.	Effective Date: TBA	None. The amendment governs internal FINRA governance.
SR-FINRA-2020-038 34-91066	Securities Offerings Private Placements Retail Communications	Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change, as modified by Amendment No. 1, to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and	FINRA Rule 5122 (Private Placements of Securities Issued by Members) FINRA Rule 5123 (Private Placements of Securities)	The Notice solicits additional comments on previously proposed amendments to FINRA rules that would require members to file retail communication concerning private placement offerings.	Comment Due Date: February 24, 2021 with rebuttal comments due March 8, 2021.	None. The Notice is for the purpose of soliciting additional comments on the proposed amendments.

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		5123 (Private Placements of Securities) that Would Require Members to File Retail Communications Concerning Private Placement Offerings that are Subject to Those Rules' Filing Requirements				
SR-FINRA-2021-002 34-91047	Securities Offerings Private Placements Retail Communications	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Private Placement Filer Form Under FINRA Rules 5122 and 5123	FINRA Rule 5122 (Private Place of Securities Issued by Members) FINRA Rule 5123 (Private Placement of Securities)	The Notice announces the adoption of a revised Filer Form that must be submitted when members submit private placement filings under FINRA Rules 5122 and 5123.	Effective Date: Immediately	Member firms that make filings under the covered rules should complete and file the revised Filer Form when it becomes available.
<u>Relevant SEC Rule Filings</u>						
None						
<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 .					
2021 Report on FINRA's Examination and Risk Monitoring Program – February 1, 2021	Examination	2021 Report on FINRA's Examination and Risk Monitoring Program – February 1, 2021	Various	The Report identifies a number of important regulatory obligations. For each obligation, the Report identifies the applicable rule and key considerations, summarizes	Immediately	None. While the report does not impose any new obligations on FINRA members it does provide a wealth of useful information.

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				noteworthy findings from recent examinations and outlines effective practice and provides additional resources that may be of value to members.		
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 .					
Risk Alert: The Division of Examinations' Continued Focus on Digital Asset Securities	The Division's latest risk alert provides examination derived observations regarding digital asset securities. These observations are intended to assist advisers, broker-dealers and other firms in developing and enhancing their compliance practices related to the offer, sale and trading of digital assets that are securities present and the unique risks presented by these assets to investors.					
<u>No Action Letters</u> of particular relevance to Broker-Dealers						
None						
Other matters of interest including materials from the SEC's Division of Examinations and other SEC <u>press releases</u>, <u>SEC public statements</u>, and FINRA <u>press releases</u>						
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.

If you would like further information please contact:

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