

# 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 March 2021

By Glen Barrentine

## Internal links

<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="#">Risk Alert</a> (March 29, 2021)	Anti-Money Laundering Suspicious Activity Reports	<a href="#">Risk Alert: Compliance Issues Related to Suspicious Activity Monitoring and Reporting at Broker-Dealers</a>	<a href="#">31 CFR §1023.320</a> Reports by brokers or dealers in securities of suspicious transactions	The SEC's Division of Examinations is providing observations from its examination program relating to suspicious activity	Immediately	Firms are advised to consider whether they should make changes to their practices and procedures in light of the offered comments and guidance.

\* Other rules may also apply

Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				monitoring and reporting.		
<a href="#">Regulatory Notice 21-12</a>	Order Handling Margin Liquidity Management	FINRA Reminds Member Firms of Their Obligations Regarding Customer Order Handling, Margin Requirements and Effective Liquidity Management Practices During Extreme Market Conditions	Various	The Notice provides guidance under existing rules relating to firm's obligations to customers in volatile markets.	Effective Immediately	Firms for whom this notice is relevant may want to review their existing practices against the guidance provided in the Notice.
<a href="#">FINRA Regulatory Notice 21-10</a>	Securities Offerings  Private Placements  Retail Communications	FINRA Updates Private Placement Filer Form Pursuant to FINRA Rules 5122 and 5123.	<a href="#">FINRA Rule 5122</a> (Private Placements of Securities Issued by Members)  <a href="#">FINRA Rule 5123</a> (Private Placements of Securities)	The Notice describes recent amendments to <a href="#">FINRA Rule 5122</a> and <a href="#">FINRA Rule 5123</a> that require members engaged in private placements to file retail communication concerning private placement offerings with FINRA.	Effective Date:  May 22, 2021	Member firms that use retail communications in connection with the sale of private placement offerings should review their existing procedures to capture and file such communications with relating to filings with FINRA.
<b><u>FINRA Regulatory Notices</u></b>						
<a href="#">FINRA Regulatory Notice 21-14</a>	"Instant Funds" Abuse	FINRA Alerts Firms to Recent Increases in ACH "Instant Funds" Abuse	None	FINRA has observed a sharp increase in new customers opening online brokerage accounts and engaging in Automated	Immediately	None

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				Clearing House “instant funds” abuse, whereby new customers will use instantly available funds provided by the brokerage firm to trade notwithstanding that the customers do not have sufficient funds in their linked bank account to meet any obligation they may incur.		
<a href="#">FINRA Regulatory Notice 21-13</a>	Margin Day Trading Pattern Day Traders	FINRA Announces Updates to the Interpretations of FINRA’s Margin Rules for Day Trading	<a href="#">FINRA Rule 4210</a> (Margin Requirements)	<a href="#">FINRA Rule 4210</a> (Margin Requirements) includes provisions that apply specifically to persons who engaged in “pattern day trading,” which turns on whether the customer executes four or more day trades within five business days. The new interpretation provides an alternative method to calculate the number of day trades when a customer engages in multiple purchases and sales of the same security on the same day.	Immediately Effective Date	None The Notice is permissive and not mandatory.

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<a href="#">Regulatory Notice 21-12</a>	Order Handling Margin Liquidity Management	FINRA Reminds Member Firms of Their Obligations Regarding Customer Order Handling, Margin Requirements and Effective Liquidity Management Practices During Extreme Market Conditions	Various	The Notice provides guidance under existing rules relating to firm's obligations to customers in volatile markets.	Effective Immediately	Firms for whom this notice is relevant may want to review their existing practices against the guidance provided in the Notice.
<a href="#">Regulatory Notice 21-11</a>	Margin When Issued and Other Extended Settlement Transactions	FINRA Requests Comment on Proposed Amendments to the Margin Rule Regarding When Issued and Other Extended Settlement Transactions	<a href="#">FINRA Rule 4210</a> (Margin Requirements)	The proposed amendment would define "extended settlement transaction" for purposes of FINRA's margin rule to mean any contract that does not provide for the payment of funds or delivery by the second business day after the contract date. Such transactions must be margined as described in the notice.	Comment Period Expiration Date: May 14, 2021	None  The Notice is for the purpose of soliciting comments on a proposed amendment to FINRA's margin rule.
<a href="#">FINRA Regulatory Notice 21-10</a>	Securities Offerings  Private Placements  Retail Communications	FINRA Updates Private Placement Filer Form Pursuant to FINRA Rules 5122 and 5123	<a href="#">FINRA Rule 5122</a> (Private Placements of Securities Issued by Members)  <a href="#">FINRA Rule 5123</a> (Private Placements of Securities)	The Notice describes recent amendments to <a href="#">FINRA Rule 5122</a> and <a href="#">FINRA Rule 5123</a> that require members engaged in private	Effective Date: May 22, 2021	Member firms that use retail communications in connection with the sale of private placement offerings should review their existing procedures to capture and file such

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				placements to file retail communication concerning private placement offerings with FINRA.		communications with relating to filings with FINRA.
<a href="#">FINRA Regulatory Notice 21-09</a>	Supervision	FINRA Adopts Rules to Address Brokers With a Significant History of Misconduct	Various	<p>This Notice describes a number of newly adopted FINRA rules that are intended to address brokers with a significant history of misconduct and the broker-dealers that employ them. As described further below, these rules have effective dates between April 15, 2021 and September 1, 2021 but, with one exception, should not require changes to most firm's existing policies or procedures.</p> <p>More specifically, these rules:</p> <p>Allow a Hearing Officer to impose conditions or restrictions on the activities of a member firm or associated person, and require the</p>	<p>Effective Date:</p> <p>As set forth in the previous column, between April 15, 2021 and September 1, 2021</p>	<p>Firms may want to review their existing procedures for the review and approval of natural persons falling in one of the covered categories to reference the need for a materiality consultation. Otherwise, while the amendments may impact firms in a number of ways, they do not require firms to make changes to their processes and procedures.</p>

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				<p>member firm to adopt heightened supervisory procedures with respect to an associated person when a disciplinary matter relating to such person is appealed to the National Adjudicatory Council (NAC) or called for NAC review. These rules are effective April 15, 2021.</p> <p>Require member firms to adopt heightened supervisory procedures for statutorily disqualified associated persons during the period a statutory disqualification eligibility request is under review by FINRA. This rule is effective June 1, 2021.</p> <p>Require FINRA to disclose through BrokerCheck® the status of a member firm as a “taping firm” under FINRA Rule 3170 (Tape Recording of Registered Persons by</p>		

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				<p>Certain Firms). This rule is effective May 1, 2021.</p> <p>Require a member firm to submit a written request to FINRA's Department of Member Regulation, through the Membership Application Group, seeking a materiality consultation and approval of a continuing membership application, if required, when a natural person seeking to become an owner, control person, principal or registered person of the member firm has, in the prior five years, one or more "final criminal matters" or two or more "specified risk events". These amendments become effective September 1, 2021.</p>		
<a href="#">Regulatory Notice 21-08</a>	Cybersecurity Phishing Alert	FINRA Alerts Firms to Phishing Email Using "finra-online.com" Domain Name	Various	The Notice alerts member firms of the use of the "finra-online.com"	Immediately	None Member firms that have not done so recently, may want to provide an alert

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				domain name in phishing emails.		to their associated persons regarding the phishing scheme and may also want to use FINRA's Notice as an opportunity to remind associated persons of the steps they should take to avoid phishing schemes.
<a href="#">Regulatory Notice 21-07</a>	Sales Practices Investment Company Products Sales Charges, Discounts, Waivers)	FINRA Provides Guidance on Common Sales Charge Discounts and Waivers for Investment Company Products	Various	This Notice reminds firms of their obligation to understand and, as appropriate, apply sales charge discounts and waivers for eligible customers;  provide an overview of common sales charge discounts and waivers;  share frequently observed findings in examinations and enforcement matters; and  note considerations firms should review to improve their compliance programs.	Effective Date: Immediately	None, though firms that engage in sales of investment company products may want to compare their practices against the provided guidance.
<b><u>Other FINRA Notices</u></b>						

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<b>None</b>						
<b><u>FINRA Rule Filings</u></b>						
<a href="#">SR-FINRA-2021-004</a> <a href="#">34-91373</a>	Trading Exchange Listed Securities Clearly Erroneous Transactions	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)	<a href="#">FINRA Rule 11892</a> (Clearly Erroneous Transactions in Exchange-Listed Securities)	The Notice extends the referenced pilot program until October 20, 2021.	Pilot Extension Date: October 20, 2021.	None  The amendment merely extends an existing pilot program.
<a href="#">SR-FINRA-2021-003</a> <a href="#">34-91262</a>	Associated Persons Form U4 Signature	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Permit Firms to File a Form U4 Based on an Electronically Signed Copy of the Form	<a href="#">FINRA Rule 1010</a> (Electronic Filing Requirements for Uniform Forms)  <a href="#">FINRA Rule 2263</a> (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4)	The Notice amends <a href="#">FINRA Rule 1010</a> (Electronic Filing Requirements for Uniform Forms) to allow firms to file a Form U4 based on an electronically signed copy of that form.	Effective Date: Immediately	Member firms that intend to take advantage of the Notice may want to revise their procedures accordingly.
<a href="#">SR-FINRA-2020-041</a> <a href="#">34-91258</a>	Restricted Firms	Order Instituting Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change to Adopt FINRA Rule 4111 (Restricted Firm Obligations) and FINRA Rule 9561 (Procedures for Regulating Activities Under	<a href="#">FINRA Rule 4111</a> (Restricted Firm Obligations)  <a href="#">FINRA Rule 9561</a> (Procedures for Regulating Activities Under Rule 4111)	The Notice announces that the Commission has extended the period in which to consider comments and take action on the proposal, which relates to requiring certain firms that are identified by FINRA as presenting a “high risk” to the investing public, such firms, called	Revised Comment Due Date: March 24, 2021	None  The order announces that the Commission has extended the period in which to consider comments and take action on the proposal.

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		Rule 4111)		“Restricted Firms,” to maintain a deposit in a segregated account that could not be withdrawn without FINRA’s permission.		
<b>Relevant SEC Rule Filings</b>						
<b>None</b>						
<b>FINRA Guidance</b>						
<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> .					
<b>SEC Guidance</b>						
<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> .					
<b><u>No Action Letters</u> of particular relevance to Broker-Dealers</b>						
<b>None</b>						
<b>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></b>						
<a href="#">Risk Alert</a> (March 29, 2021)	Anti-Money Laundering Suspicious Activity Reports	<a href="#">Risk Alert: Compliance Issues Related to Suspicious Activity Monitoring and Reporting at Broker-Dealers</a>	<a href="#">31 CFR §1023.320</a> Reports by brokers or dealers in securities of suspicious transactions	The SEC’s Division of Examinations is providing observations from its examination program relating to suspicious activity monitoring and reporting.	Immediately	Firms are advised to consider whether they should make changes to their practices and procedures in light of the offered comments and guidance.

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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 boarder 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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