

# 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 **June 2021**

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="#">FINRA Regulatory Notice 21-23</a>	Customers Sales Practices Best Execution Payment for Order Flow	FINRA Reminds Member Firms of Requirements Concerning Best Execution and Payment for Order Flow	<a href="#">FINRA Rule 5310</a> (Best Execution and Interpositioning)	It seems likely that both the SEC and FINRA will be taking a much closer look at 'best execution compliance by firms that receive payment for order flow. Such firms would do well to review	Immediately	None  The Notice "reminds" members of certain currently existing obligations but does not impose any new

\* Other rules may also apply

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				their existing procedures and practices against the advice and guidance set forth in the notice.		obligation on members.
<a href="#">Information Notice</a> 6/3/21	Financial Reporting  FOCUS and Annual Reporting Requirements  FOCUS Part II Supplemental Inventory Schedule  eFOCUS System	Redesigned eFOCUS System and SEC Security-Based Swap Reporting Requirements; Revised Supplemental Inventory Schedule.	<a href="#">SEA Rule 17a-5</a>	The Notice informs member firms that the SEC has amended FOCUS Report Part II with the result that firms that currently filed FOCUS Report Part II will now file the amended FOCUS Report Part II; firms that currently file FOCUS Report Part II CSE will instead file FOCUS Report Part II; and firms that file FOCUS Report Part II will no longer need to file the Supplemental Inventory Schedule.  The Notice also announces a redesigned eFOCUS system.	Effective Date:  The revised FOCUS reporting requirements will apply beginning with reports for the period ending October 31, 2021.  The redesigned eFOCUS system will be made available to quarterly filers beginning June 24 and to monthly filers in July.	Member firms that are affected by the proposed changes should be prepared to make changes to their FOCUS filings by the effective date.
<a href="#">SR-FINRA-2020-038</a> <a href="#">34-92133</a>	Securities Offerings  Filings  Private Placements	Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to FINRA Rules 5122	<a href="#">FINRA Rule 5122</a> (Private Placements of Securities Issued by Members)  <a href="#">FINRA Rule 5123</a> (Private	The Order approves amendments that will require members to file retail communications concerning	Effective Date:  TBD	Members that market private placements to retail investors will need to revise their policies and procedures to

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	Retail Communications	(Private Placements of Securities Issued by Members) and 5123 (Private Placement of Securities) that Would Require Members to File Retail Communication s Concerning Private Placement Offerings that are Subject to Those Rules' Filing Requirements	Placements of Securities)	private placement offerings with FINRA's Corporate Financing Department.		comply with the approved amendments.

**FINRA Regulatory Notices**

<a href="#">FINRA Regulatory Notice 21-23</a>	Customers Sales Practices Best Execution Payment for Order Flow	FINRA Reminds Member Firms of Requirements Concerning Best Execution and Payment for Order Flow	<a href="#">FINRA Rule 5310</a> (Best Execution and Interpositioning)	It seems likely that both the SEC and FINRA will be taking a much closer look at' best execution compliance by firms that receive payment for order flow . Such firms would do well to review their existing procedures and practices against the advice and guidance set forth in the notice.	Immediately	None  The Notice "reminds" members of certain currently existing obligations but does not impose any new obligation on members.
<a href="#">FINRA Regulatory Notice 21-22</a>	Cybersecurity Phishing Alert	FINRA Alerts Firms to Phishing Email From "FINRA Support" from the Domain	Various	The Notice alerts member firms of the use of the "FINRA Support"/"w estou r.org" domain	Immediately	None  See FINRA Regulatory Notice 21-20 below .

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		Name "w estour.org"		name in phishing emails.		
<a href="#">FINRA Regulatory Notice 21-21</a>	Reporting  Order Audit Trail System (OATs)  Consolidated Audit Trail (CAT)	FINRA Eliminates the Order Audit Trail System	Order Audit Trail System Rules	The Notice informs members that FINRA has determined that the reliability and accuracy of CAT reporting meets relevant standards, with the result that FINRA has determined to retire OATS, and rely only on CAT reporting, as of September 1, 2021.	Effective Date:  September 21, 2021	None
<a href="#">FINRA Regulatory Notice 21-20</a>	Cybersecurity  Phishing Alert	FINRA Alerts Firms to Phishing Email Using "gateway-finra.org" Domain Name	Various	The Notice alerts member firms of the use of the "gateway-finra.org" domain name in phishing emails.	Immediately	None  Member firms that have not done so recently, may want to provide an alert 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="#">FINRA Regulatory Notice 21-19</a>	Reporting  Short Interest	FINRA Requests Comment on Short Interest Position	<a href="#">FINRA Rule 4560</a> (Short-Interest Reporting)	Contemplated changes to FINRA's short interest reporting requirements	Comment Period Expiration Date:	None  The Notice is for the purpose of requesting

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		Reporting Enhancements and Other Changes Related to Short Sale Reporting		include changes to the data points currently collected and to the frequency and timing of such reporting and FINRA's dissemination thereof. The Notice also reports that FINRA is considering adoption of a new rule that would require participants of a registered clearing agency to report to FINRA information on allocation of fail-to-deliver positions. FINRA is also considering self-publishing short interest data for both listed and unlisted securities. Currently, data for listed securities is provided by FINRA to the listing exchange, which typically publishes the information.	August 4, 2021	comments on a possible rule change and does not impose any new obligations on member firms.

**Other FINRA Notices**

<a href="#">Information Notice</a> 6/3/21	Financial Reporting	Redesigned eFOCUS System and SEC Security-Based Swap Reporting	<a href="#">SEA Rule 17a-5</a>	The Notice informs member firms that the SEC has amended FOCUS Report	Effective Date:  The revised FOCUS reporting	Member firms that are affected by the proposed changes should be prepared to make changes to
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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
	<p>FOCUS and Annual Reporting Requirements</p> <p>FOCUS Part II</p> <p>Supplemental Inventory Schedule</p> <p>eFOCUS System</p>	<p>Requirements; Revised Supplemental Inventory Schedule.</p>		<p>Part II with the result that firms that currently filed FOCUS Report Part II will now file the amended FOCUS Report Part II; firms that currently file FOCUS Report Part II CSE will instead file FOCUS Report Part II; and firms that file FOCUS Report Part II will no longer need to file the Supplemental Inventory Schedule.</p> <p>The Notice also announces a redesigned eFOCUS system.</p>	<p>requirements will apply beginning with reports for the period ending October 31, 2021.</p> <p>The redesigned eFOCUS system will be made available to quarterly filers beginning June 24 and to monthly filers in July.</p>	<p>their FOCUS filings by the effective date.</p>

**FINRA Rule Filings**

<p><a href="#">SR-FINRA-2021-017</a></p> <p><a href="#">34-92239</a></p>	<p>Reporting</p> <p>Order Audit Trail System (OATs)</p> <p>Consolidated Audit Trail (CAT)</p> <p>Materiality Consultation</p> <p>Final Criminal Matters</p> <p>Specified Risk Events</p>	<p>Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Retirement of FINRA's Order Audit Trail System</p>	<p>Order Audit Trail System Rules</p>	<p>The Notice informs members that FINRA has determined that the reliability and accuracy of CAT reporting meets relevant standards, with the result that FINRA has determined to retire OATS, and rely only on CAT reporting, as of September 1, 2021.</p>	<p>Effective Date:</p> <p>September 21, 2021</p>	<p>None</p>
<p><a href="#">SR-FINRA-2021-016</a></p>	<p>Sales Practices</p>	<p>Notice of Filing of a Proposed</p>	<p><a href="#">FINRA Rule 2165</a> (Financial</p>	<p>The proposed rule change</p>	<p>Comment Due Date:</p>	<p>None</p>

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<a href="#">34-92225</a>	Financial Exploitation	Rule Change to Amend Rule 2165 (Financial Exploitation of Specified Adults)	Exploitation of Specified Adults)	would permit member firms to (1) extend a temporary hold on a disbursement of funds or securities or a transaction in securities for an additional 30-business days if the member firm has reported the matter to a state regulator or agency or a court of competent jurisdiction and place a temporary hold on a securities transaction where there is a reasonable belief of financial exploitation.	21 days after publication in the Federal Register	The Notice' is for the purpose of seeking comments on a proposed FINRA Rule amendment.
<a href="#">SR-FINRA-2021-015</a> <a href="#">34-92183</a>	Continuing Education	Notice of Filing of a Proposed Rule Change to Amend FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements)	<a href="#">FINRA Rule 1210</a> (Registration Requirements) <a href="#">FINRA Rule 1240</a> (Continuing Education Requirements)	The proposed rule change requires that the Regulatory Element of the continuing education requirement be completed annually rather than every three years as is currently required.  The proposal also provides a path for individuals to maintain their qualification following the	Comment Due Date: July 15, 2021	None  The Notice' is for the purpose of seeking comments on a proposed FINRA Rule amendment.

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
				termination of a registration.		
<a href="#">SR-FINRA-2020-014</a> <a href="#">34-92139</a>	Filing Requirements  OTC Securities  Published Quotations  Form 211	Notice of Filing of a Proposed Rule Change Relating to Members' Filing Requirements Under FINRA Rule 6432 (Compliance with the Information Requirements of SEA Rule 15c2-11)	<a href="#">FINRA Rule 6432</a> (Compliance with the Information Requirements of SEA Rule 15c2-11)	The Notice solicits comments on proposed amendments to FINRA Rule 6432 to reflect recent changes to Exchange Act Rule 15c2-11, which rule sets forth the information review and maintenance requirements for broker-dealers that publish quotations in quotation medium, including interdealer networks, for securities in the over the counter market.	Comment Due Date:  21 days from the date of publication in the Federal Register	None  The Notice' is for the purpose of seeking comments on a proposed FINRA Rule amendment.
<a href="#">SR-FINRA-2020-038</a> <a href="#">34-92133</a>	Securities Offerings  Filings  Private Placements  Retail Communications	Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to FINRA Rules 5122 (Private Placements of Securities Issued by Members) and 5123 (Private Placement of Securities) that Would Require Members to File Retail	<a href="#">FINRA Rule 5122</a> (Private Placements of Securities Issued by Members)  <a href="#">FINRA Rule 5123</a> (Private Placements of Securities)	The Order approves amendments that will require members to file retail communications concerning private placement offerings with FINRA's Corporate Financing Department.	Effective Date:  TBD	Members that market private placements to retail investors will need to revise their policies and procedures to comply with the approved amendments.

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
		Communications Concerning Private Placement Offerings that are Subject to Those Rules' Filing Requirements				
<a href="#">SR-FINRA-2020-031</a> <a href="#">34-92105</a>	Trading Inter-dealer Quotation System OTC Equity Securities Quotations	Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt Proposed Rule 6439 (Requirements for Member Inter-Dealer Quotation Systems) and Rescind the Rules Relating to the OTC Bulletin Board Service	<a href="#">Proposed Rule 6439</a>  (Requirement for Member Inter-Dealer Quotation Systems)	The Order deletes existing rules related to the OTC Bulletin Board Service. The Order also requires Members that operate an inter-dealer quotation system (IDQS) that permits real-time quotation updates in OTC equity securities, including alternate trading systems, to enforce written policies and procedures related to the collection and dissemination of such quotation information. Such members will also be required to post such procedures and make them available to prospective subscribers and will have to establish non-discriminatory written standards for access to such systems.	Effective Date:  TBD	Members that operate an inter-dealer quotation system (IDQS) that permits quotation updates on a real-time basis in OTC equity securities, including alternate trading systems, will need to revise their practices, policies and procedures to comply with the approved amendments.

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Item	Subject matter	Heading	Relevant rule*	Comments	Relevant date	Impact on member
<a href="#">SR-FINRA-2020-013</a> <a href="#">34-92105</a>	Financial Reporting  FOCUS and Annual Reporting Requirements  FOCUS Part II  Supplemental Inventory Schedule  eFOCUS System	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Supplemental Inventory Schedule Pursuant to FINRA Rule 4524 (Supplemental FOCUS Information)	<a href="#">FINRA Rule 4524</a> (Supplemental FOCUS Information)  <a href="#">SEA Rule 17a-5</a>	The Notice amends the Supplemental Inventory Schedule (the "SIS") pursuant to <a href="#">FINRA Rule 4524</a> (Supplemental FOCUS Information) so that members that are filers of FOCUS Report Part II will not be required to file the SIS. This change reflects amendments by the SEC to the FOCUS Report Part II with the result that firms that currently filed FOCUS Report Part II will now file the amended FOCUS Report Part II; firms that currently file FOCUS Report Part II CSE will instead file FOCUS Report Part II; and firms that file FOCUS Report Part II will no longer need to file the Supplemental Inventory Schedule.	Effective Date:  The revised FOCUS reporting requirements will apply beginning with reports for the period ending October 31, 2021.  The redesigned eFOCUS system will be made available to quarterly files beginning June 24 and to monthly files in July.	Member firms that are affected by the proposed changes should be prepared to make changes to their FOCUS filings by the effective date.

**Relevant SEC Rule Filings**

None

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<b><u>FINRA Guidance</u></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 <a href="#">Division of Examination</a> and other SEC <u>press releases</u>, <u>SEC public statements</u>, and FINRA <u>press releases</u></b>						
<a href="#">SEC Press Release 2021-104</a>	SEC, NASAA, and FINRA Offer Free Resource to Securities Firms to Assist in Detection, Prevention and Reporting of Financial Exploitation of Seniors			The resource I question is a training program provided jointly by the three regulators and available on NASAA's website <a href="#">here</a> ; NASAA's Serve Our Seniors website <a href="#">here</a> ; SEC's website <a href="#">here</a> ; and FINRA's website <a href="#">here</a> .		

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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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