

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 October 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> |

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|-----------------|---|----------------|-------------|----------------------|------------------|
| Chart color key | Action may be required (does not include continuing education items) | Administrative | Arbitration | Continuing education | No action needed |
|-----------------|---|----------------|-------------|----------------------|------------------|

| Item | Subject matter | Heading | Relevant rule* | Comments | Relevant date | Impact on member |
|--|---|--|---|---|---------------------------------------|---|
| <u>This month's item(s) of note</u> | | | | | | |
| SEC Press Release 2021-212 | SEC Staff Releases Report on Equity and Options Market Structure Conditions in Early 2021 See also NRF client briefing: Recent US SEC briefing on gamification | | | | | |
| SR-FINRA-2021-026 34-93355 | Trading Listed Securities Clearly Erroneous Transactions | Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Program Related | FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange Listed Securities) | The filing provides notice that FINRA is extending the date of its existing pilot program relating to | Newly Extended Pilot Expiration Date: | None The Notice extends the date of an existing pilot program. |

* Other rules may also apply

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| | | to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) | | clearly erroneous transactions in exchange-listed securities. Other than the newly extended pilot expiration date, the filing does not make any changes to the existing rule. | April 20, 2022 | |
| SR-FINRA-2021-027 34-93300 | Trading NMS Stocks Circuit Breakers | Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period Related to FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) | FINRA Rule 6121.02 (Market Wide Circuit Breakers in NMS Stocks) | The filing provides notice that FINRA is extending the date of its existing pilot program relating to clearly erroneous transactions in exchange-listed securities. Other than the newly extended pilot expiration date, the filing does not make any changes to the existing rule. | Newly Extended Pilot Expiration Date: March 18, 2022 | None The Notice extends the date of an existing pilot program. |
| FINRA Regulatory Notice 21-36 | Anti-Money Laundering | FINRA Encourages Firms to Consider How to Incorporate the Government-wide Anti-Money Laundering and Countering the Financing of Terrorism Priorities Into Their AML Programs | Not Applicable | In June of this year, FinCEN issued its first government-wide priorities with respect to anti-money laundering (available here). These priorities are intended to assist covered financial institutions in meeting their | None at this time. The issuance of these priorities does not create an change in the requirements of the Bank Secrecy Act or with respect to regulators' expectations | Broker-dealers are not currently required to incorporate these priorities into their AML programs but will be required to do within 180 days follow such time as FinCEN promulgates any appropriate regulations |

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| | | | | obligations under AML and counter terrorist financing laws and regulations. | with respect to covered institutions. | regarding the new priorities. In anticipation of the promulgation by FinCEN of such regulations, FINRA is publishing this notice to encourage firms to being to consider how to incorporate these priorities into their existing AML programs. |
| <u>FINRA Regulatory Notices</u> | | | | | | |
| FINRA Regulatory Notice 21-38 | Trading Markets Equities OTC OTC Bulletin Board | FINRA Announces Closure of the OTC Bulletin Board | Various | The Notice announces that the OTC Bulletin Board will cease operations on November 8, 2021. The Notice also announces that the OTCBB-related rules will be deleted from the FINRA rulebook. | Effective Date: November 8, 2021 | None |
| FINRA Regulatory Notice 21-37 | Enforcement Sanction Guidelines Consolidated Audit Trail (CAT) | The National Adjudicatory Council (NAC) Revises the Sanction Guidelines | Sanction Guidelines | The Notice states that FINRA has revised its sanction guidelines to include violations of Consolidated Audit Trail System (CAT) industry member compliance rules. | Effective Date: Immediately | None |

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| FINRA Regulatory Notice 21-36 | Anti-Money Laundering | FINRA Encourages Firms to Consider How to Incorporate the Government-wide Anti-Money Laundering and Countering the Financing of Terrorism Priorities Into Their AML Programs | Not Applicable | In June of this year, FinCEN issued its first government-wide priorities with respect to anti-money laundering (available here). These priorities are intended to assist covered financial institutions in meeting their obligations under AML and counter terrorist financing laws and regulations. | None at this time. The issuance of these priorities does not create an change in the requirements of the Bank Secrecy Act or with respect to regulators' expectations with respect to covered institutions. | Broker-dealers are not currently required to incorporate these priorities into their AML programs but will be required to do within 180 days follow such time as FinCEN promulgates any appropriate regulations regarding the new priorities. In anticipation of the promulgation by FinCEN of such regulations, FINRA is publishing this notice to encourage firms to being to consider how to incorporate these priorities into their existing AML programs. |
| FINRA Regulatory Notice 21-35 | Trade Reporting OTC Equity Securities Order Routing Disclosure NMS Securities | FINRA Requests Comment on Proposed Order Routing Disclosure Requirements for OTC Equity Securities and Potential Steps to Facilitate Investor Access to Current Order Routing Disclosures for NMS Securities | Not Applicable | The proposal described in the Notice would impose obligations on member firms to publish quarterly order routing disclosure reports on OTC Equity Securities. These reports would be similar to those now required for | Comment Due Date: December 6, 2021 | None. The Notice is for the purpose of requesting comments on proposed rule changes and does not impose any obligation on member firms. |

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| | | | | NMS stocks under SEC Rule 606(a) of Regulation NMS. The Notice also requests input on possible steps to further facilitate investor access to current order routing disclosures for NMS securities. | | |
| Other FINRA Notices | | | | | | |
| Information Notice 10/15/21 | Margin and Possession or Control Extensions of Time | 2022 Holiday Margin Extension Schedule | Regulation T Rule 220.4 (Margin Account) Regulation T Rule 220.8 (Cash Account Account) SEA Rule 15c3-3 (Customer Protection – Reserve and Custody of Securities) | The Notice sets forth the changes to due dates for filings of extensions of time under the margin rules and SEA Rule 15c3-3 on account of holidays in 2022 when banks or exchanges are closed. The Notice also remind firms that Christmas Day 2021 is observed as an exchange holiday on December 24, 2021 and Juneteenth National Independence Day is a new holiday that will be observed on June 20, 2022. | Immediately | Firms that carry customer accounts and/or extend margin are advised to make note of the referenced due dates. |
| FINRA Rule Filings | | | | | | |
| SR-FINRA-2021-026 34-93355 | Trading Listed Securities | Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot | FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange Listed Securities) | The filing provides notice that FINRA is extending the date of its existing pilot | Newly Extended Pilot Expiration Date: | None The Notice extends the date of an existing pilot program. |

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| | Clearly Erroneous Transactions | Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) | | <p>program relating to clearly erroneous transactions in exchange-listed securities.</p> <p>Other than the newly extended pilot expiration date, the filing does not make any changes to the existing rule.</p> | April 20, 2022 | |
| SR-FINRA-2021-027 34-93300 | Trading NMS Stocks Circuit Breakers | Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period Related to FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) | FINRA Rule 6121.02 (Market Wide Circuit Breakers in NMS Stocks) | <p>The filing provides notice that FINRA is extending the date of its existing pilot program relating to clearly erroneous transactions in exchange-listed securities.</p> <p>Other than the newly extended pilot expiration date, the filing does not make any changes to the existing rule.</p> | <p>Newly Extended Pilot Expiration Date:</p> <p>March 18, 2022</p> | <p>None</p> <p>The Notice extends the date of an existing pilot program.</p> |

Relevant SEC Rule Filings

None

FINRA Guidance

[COVID-19 Guidance and Relief](#)

Firms are urged to monitor updates to the guidance and relief set forth on [FINRA's COVID-19 Page](#).

Podcast

[Encore | Overlapping Risks: Anti-Money Laundering and Cybersecurity](#)

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| | Firm regulatory risks and priorities don't exist in a vacuum. And that is perhaps nowhere clearer than when it comes to a firm's anti-money laundering responsibilities. A firm's AML risks can overlap with any number of other priorities. On this episode we look at the overlapping risks of AML and cybersecurity. | | | | | |
| 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 . | | | | | |
| No Action Letters of particular relevance to Broker-Dealers | | | | | | |
| None -- | | | | | | |
| 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 | | | | | | |
| SEC Press Release 2021-212 | SEC Staff Releases Report on Equity and Options Market Structure Conditions in Early 2021 See also NRF client briefing: Recent US SEC briefing on gamification | | | | | |

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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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