

Financial Services

Providing Strategic Legal Guidance to the Global Financial Services Industry

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FINRA Seeks Feedback on Pandemic-Related Impacts and Lessons

On December 16, 2020, FINRA issued Regulatory Notice 20-42 announcing a retrospective rule review to seek comments on “Lessons From the COVID-19 Pandemic.” In the notice, FINRA requests interested parties to provide observations and feedback concerning changes to operations and business models attributable to the pandemic. And while it welcomed comments broadly, it highlighted several areas of specific interest, including business continuity plans; remote offices, alternative work arrangements and remote inspections; engaging with FINRA and FINRA processes; qualification examinations; investors’ experiences; and general effectiveness, challenges and economic impact.

FINRA’s comment period expires February 16, 2021.

BACKGROUND

Since March 2020, FINRA has been offering guidance and temporary relief in an effort to address health and safety concerns caused by the COVID-19 pandemic and to accommodate logistical disruptions caused by shelter-in-place and stay-at-home orders that forced unprecedented changes in member firm business operations, particularly those affecting supervision. Beyond safety and operational concerns, the pandemic elevated fraud and cybersecurity risks for member firms when their workforces became largely remote, which FINRA also sought to address in the early days of the pandemic. FINRA launched several initiatives to respond to issues and questions related to the pandemic and communicated with stakeholders through a combination of Regulatory Notices, FAQs, temporary rule amendments, and cooperative releases with other regulators. Regulatory Notice 20-42 now asks stakeholders to grade FINRA’s efforts and invites input on rule changes it might consider moving forward.

THE RETROSPECTIVE REVIEW PROCESS

Within its Notice, FINRA describes a two-phased retrospective review process that will start with the current assessment phase and conclude



with an implementation phase. In the implementation phase, FINRA will consider rule amendments informed by its findings during the assessment phase. Any rule amendments will incorporate input from FINRA's advisory committees along with the feedback it receives from its membership and other stakeholders during the assessment phase.

With this process in mind, member firms might consider identifying and commenting on ways that FINRA's existing rules fail to align with the current (and post-pandemic) reality of broad-based remote work arrangements and other complications caused by the pandemic. Recordkeeping obligations and remote supervision are among several areas acutely impacted by operational changes caused by the pandemic that could benefit from a more flexible approach that jibes with a largely home-based workforce.

AREAS IDENTIFIED FOR REVIEW AND COMMENT

FINRA provides a series of categorized questions for member firms that it believes are especially relevant to this retrospective review and about which it seeks feedback:

Business Continuity Planning

FINRA asks member firms whether compliance with Rule 4370 (Business Continuity Plans and Emergency Contact Information) has been impacted by the pandemic and, if so, how changes to the rule might ease compliance moving forward. It further asks if firms' Business Continuity Plans directly or indirectly addressed circumstances of the pandemic and whether they planned to make changes as a result of the challenges the pandemic presented.

Remote Offices, Alternative Work Arrangements, and Remote Inspections

FINRA asks whether firms anticipate continued use of remote offices and alternative work arrangements after the pandemic and what challenges these arrangements present in terms of complying with FINRA rules. In particular, FINRA asks for input on potential redefinition of the terms "branch office" and "OSJ" in Rule 3110. It also seeks feedback concerning member firms' experiences with branch-level remote inspections and methods firms have used to engage with customers and supervise personnel working remotely, including any challenges these experiences presented.

Engaging with FINRA and FINRA Processes

FINRA next asks what rule and process changes it might implement to facilitate greater and more effective engagement with member firms and other stakeholders. In particular, FINRA asks whether it should consider expanding its use of standardized requests for data routinely requested from firms as part of FINRA's examinations to permit more effective remote inspections and reduce uncertainty.

Qualification Examinations

FINRA asks about candidates' experiences taking qualification examinations during the pandemic and whether it should expand the use of online delivery of these examinations. It also asks firms about their experiences – both challenges and benefits – with the temporary relief granted through SR-FINRA-2020-026, which extended the period for registered persons to function as principals or operations professionals without passing the appropriate qualification examinations.

Investors' Experiences

FINRA asks what impacts on investors have resulted because of pandemic-related changes to member firms' operations and business models. For example, FINRA asks whether investors had trouble accessing funds or securities during the pandemic, or experienced challenges in communicating with firms or their registered representatives. It further asks what feedback member firms have received from investors and whether firms have observed changes in retail or institutional investors' behavior during the pandemic.



General Effectiveness, Challenges and Economic Impact

The FINRA notice concludes by asking about the economic impacts, including costs and benefits, of the rules mentioned above, including whether some firms were disproportionately impacted based on their size or business model. FINRA also asks whether particular groups or subsets of investors or other stakeholders faced challenges due to a lack of access to connectivity or other technology necessary to access online services or assistance.

CONCLUSION

Consistent with FINRA's recent self-evaluation and organizational improvement efforts commonly referred to as *FINRA 360*, the regulator again appears to be signaling to the industry that it recognizes what the "S" in SRO stands for. Member firms and other interested parties should consider taking this opportunity to conduct their own assessments and to provide FINRA with the kind of feedback it has invited.

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