Regulatory Notice 22-20

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Notice Type
- Guidance

Suggested Routing
- Legal
- Registered Representatives
- Senior Management

Key Topics
- FINRA Sanction Guideline

Sanction Guidelines

The National Adjudicatory Council (NAC) Revises the Sanction Guidelines

Effective Date: Effective Immediately

Summary

The NAC has revised FINRA's *Sanction Guidelines*, which guide FINRA adjudicators in developing remedial sanctions for violations of the securities rules. These revisions were based on a review to ensure that the guidelines accurately reflect the levels of sanctions imposed in FINRA disciplinary proceedings. The revisions tailor sanctions to differentiate between types of respondents and modify the *Sanction Guidelines* in the following ways:

- split each current guideline into separate guidelines for individuals and firms;
- create separate fine ranges for small and mid-size or large-size firms;
- remove the upper limit of the fine ranges for mid-size and large-size firms for select guidelines;
- create Anti-Money Laundering guidelines;
- add additional discussion of non-monetary sanctions for firms;
- introduce single fine ranges for all actions in the Quality of Markets guidelines and other select guidelines;
- establish $5,000 as the minimum low end for all firm fine ranges; and
- delete select guidelines.

The revised *Sanction Guidelines* are effective immediately and available on FINRA's website.

Questions concerning this *Notice* should be directed to:

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Background and Discussion

FINRA's *Sanction Guidelines* familiarize FINRA member firms with some of the typical securities rule violations and the ranges of disciplinary sanctions that may result from those rule violations. FINRA's adjudicators use the *Sanction Guidelines* to determine appropriately remedial sanctions in disciplinary proceedings. FINRA's Department of Enforcement, member firms and associated persons also refer to the *Sanction Guidelines* in settlements of disciplinary matters. The *Sanction Guidelines* do not provide predetermined or fixed sanctions for particular violations. Rather, the central concept of the *Sanction Guidelines* is that adjudicators start with a range of appropriate sanctions for a particular violation and consider applicable aggravating and mitigating factors to arrive at an appropriate sanction for the particular circumstances presented in each case.

New Guidance

The NAC revised the *Sanction Guidelines* in seven respects to create one subset of guidelines applicable to firms and another subset of guidelines applicable to individuals.[1] The majority of the guidelines remain substantively the same with a few exceptions discussed below.

1. **Create New Fine Ranges Specific to Individuals and Firm Sizes.** The *Sanction Guidelines* create two subsets of guidelines—one subset of guidelines applicable to firms and one subset of guidelines applicable to individuals. The guidelines applicable to firms have a separate fine range for small firms and mid-size or large-size firms. The *Sanction Guidelines* adopt the definition of firm size from FINRA's By-Laws. The *Sanction Guidelines* instruct adjudicators to presumptively apply the guideline range specified for the firm's size while also considering whether the other range would be more appropriate with a view toward ensuring that the sanctions imposed are remedial and designed to deter future misconduct.

   To reflect the fine amounts in many settlements, the *Sanction Guidelines* increase the lower and upper limit of the fine ranges for mid-size and large-size firms for nearly all guidelines. To more accurately reflect FINRA's settlements with individuals, the *Sanction Guidelines* decrease the upper limit of the fine range for individuals in many instances.

2. **Change Some Fine Ranges to Acknowledge Large Fine Amounts.** The prior version of Sanction Guidelines had $310,000 as the top of the highest recommended fine range. The *Sanction Guidelines* remove the upper limit of the fine ranges from nine guidelines for mid-size and large-size firms to reflect the settlement amounts that FINRA frequently seeks for these types of violations and the fact that these guidelines address the most serious violations that FINRA pursues:
   - Sales of Unregistered Securities (high volume of or recurring transactions in penny stocks);
   - Failure to Respond or Failure to Respond Truthfully to Requests Made Pursuant to FINRA Rule 8210;
   - Best Execution;
   - Marking the Open or Marking the Close;
   - Churning, Excessive Trading, or Switching;
   - Fraud, Misrepresentations or Material Omissions of Fact;
   - Pricing—Excessive Markups/Markdowns and Excessive Commissions;
   - Research Analysts and Research Reports; and
   - Supervision—Systemic Supervisory Failures.
3. **Add AML Guidelines.** The *Sanction Guidelines* introduce six Anti-Money Laundering (AML) guidelines: three for firms and three for individuals. AML compliance is an area of regulatory risk and thus a regulatory priority for FINRA. Because FINRA, the Securities and Exchange Commission and other regulators consistently settle with firms for AML violations well in excess of $310,000, the *Sanction Guidelines* have no upper limit on the fine range for mid-size and large-size firms for AML violations that involve the failure to reasonably monitor to report suspicious transactions.
4. **Refocus Select Existing Guidelines.** The *Sanction Guidelines* restructure or reword seven guidelines to improve their clarity and usability. These guidelines are:
   - Cheating, Using an Impostor, or Violating the Rules of Conduct in Qualification Examinations or in the Firm Element or Regulatory Element of Continuing Education;
   - Forgery, Unauthorized Use of Signatures, or Falsification of Records;
   - Research Analysts and Research Reports—Relationships, Information Barriers, and Potential Conflicts;

- Research Analysts and Research Reports—Research Report Disclosure Requirements;
- Research Analysts and Research Reports—Restrictions on Personal Trading;
- Communications With the Public—Failure to Comply with Approval, Review, Recordkeeping, and Filing Requirements; and
- Communications With the Public—Failure to Comply with Content Standards.

The *Sanction Guidelines* also introduce single fine ranges for all actions in the Quality of Market guidelines and other select guidelines. A single fine range aligns these guidelines with the format in the other guidelines and, in the case of the Quality of Markets guidelines, permits adjudicators to consider a respondent's disciplinary history without limiting it to misconduct in the prior three years.

5. **Describe Additional Non-monetary Sanctions for Firms.** The *Sanction Guidelines* add additional support for non-monetary sanctions for respondents that engage in repeated violations and serious misconduct. The General Principles Applicable to All Sanction Determinations in the *Sanction Guidelines* describe non-monetary sanctions adjudicators should consider, including suspending or barring a respondent firm from engaging in a particular business line or activity; limiting a respondent firm's business lines or products offered; requiring a respondent firm to implement heightened supervision of certain individuals or departments in the firm; requiring a respondent firm to retain an independent consultant to design and implement procedures for improved future compliance with regulatory requirements; requiring a respondent firm to certify to FINRA that it has adopted revised supervisory procedures or has completed a task; suspending a respondent firm from opening new customer accounts for a specified period of time; requiring a respondent firm or individual respondent to obtain a FINRA staff "no objection" letter regarding a proposed communication with the public prior to disseminating that communication to the public; and requiring a respondent firm to institute tape recording procedures.

   In addition, several guidelines explicitly instruct adjudicators to consider non-monetary sanctions. These recommendations have been added to guidelines that address violations with significant potential for customer harm and for which revisions to procedures would be an appropriate remedial sanction.

6. **Establish $5,000 as the Minimum for All Firm Fine Ranges.** For small firms, the *Sanction Guidelines* increase the minimum low end of the fine ranges to $5,000 for all guidelines. This change acknowledges that FINRA does not routinely settle disciplinary matters with firms, other than minor rule violations, for less than $5,000. Other than raising the low end of the fine ranges, the Sanction Guidelines do not increase the fine ranges applicable to small firms, with four exceptions. The exceptions—(i) Fraud, Misrepresentations,

or Omissions of Material Fact – Intentional or reckless conduct; (ii) Churning, Excessive Trading, or Switching; (iii) Failure to Respond or Failure to Respond Truthfully to Requests Made Pursuant to Rule 8210; and (iv) Selling Away (Private Securities Transactions)—are based on the importance of establishing serious sanctions for these violations.

7. **Remove Select Guidelines.** The *Sanction Guidelines* delete 20 prior guidelines. These guidelines were used infrequently and therefore are being removed to improve usability of the *Sanction Guidelines*. In addition, the substance of some prior guidelines has been incorporated into another guideline. Deleting a specific guideline, however, does not limit the enforceability of the underlying rules. The *Sanction Guidelines* have always covered only a subset of FINRA's rules and instruct that—for violations that are not addressed with a guideline—adjudicators should look to analogous violations for guidance. Attachment A lists the 20 deleted guidelines.

Endnote

1. The NAC is FINRA's committee with primary responsibility for considering policies regarding disciplinary sanctions and has periodically revised the *Sanction Guidelines* since 1993. The NAC is also FINRA's appellate tribunal for disciplinary cases. It is a 15-member committee composed of industry and non-industry members.

Attachment A

Guideline	Rules
Engaging in Prohibited Municipal Securities Business	MSRB Rule G-37
Regulation T and Margin Requirements—Violations of Regulation T or FINRA Margin Requirements	Regulation T; Part 220 Issued by the Board of Governors of the Federal Reserve Board; and FINRA Rules 2010 and 4210
Confidentiality Agreements—Settling With Customer in Exchange for Customer Agreement Not to Cooperate With Regulatory Authorities	FINRA Rule 2010
Continuing Education (Firm Element)—Failure to Comply With Rule Requirements	FINRA Rules 2010 and 1250
Continuing Education (Regulatory Element)—Failure to Comply With Rule Requirements	FINRA Rules 2010 and 1250
Anti-Intimidation/Coordination—Failure to Comply With Rule Requirements	FINRA Rules 2010 and 5240
Backing Away	FINRA Rules 2010 and 5220
ECN Display Rule—Failure to Comply With Rule Requirements	FINRA Rule 2010 and Regulation NMS, Rule 602
Failure to Display Minimum Size in NASDAQ Securities, CQS Securities and OTC Bulletin Board Securities	FINRA Rules 2010, 6170 and 6272, and Exchange Act Rule 144A
Order Audit Trail System (OATS)—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting; and Clock Synchronization Failure	FINRA Rules 7400 through 7460
Passive Market Making Violations	FINRA Rule 2010 and Regulation M
Prohibition on Transactions, Publication of Quotations or Publication of Indications of Interest During a Trading Halt	FINRA Rules 2010 and 5260
MSRB Rule G-37 Reporting—Late Filing; Failing to File; Filing False or Misleading Reports	MSRB Rule G-37
Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account for Day Trading; Failure to Preserve Required Day-Trading Records	FINRA Rules 2130 and 2270

Guideline	Rules
Guaranteeing a Customer Against Loss	FINRA Rules 2010 and 2150
Institutional Communications—Failing to Establish and Maintain Written Procedures in Compliance With Rule Standards; Failing to Comply With Rule Standards Regarding Recordkeeping	FINRA Rule 2210
Penny Stock Rules—Failure to Comply With Rule Requirements	FINRA Rule 2010 and Exchange Act Rules 15g-1 through 15g-9
Trading Ahead of Research Reports	FINRA Rules 2010 and 5280
Disqualified Persons—Failure to Discharge Supervisory Obligations	FINRA Rules 2010 and 3110
Supervision—Failure to Comply With Taping Rule Requirements	FINRA Rules 2010 and 3170