

Retrospective Rule Review

FINRA Requests Comment on the Effectiveness and Efficiency of Its Rule on the Annual Compliance Meeting

Comment Period Expires: June 25, 2018

Summary

FINRA is conducting a retrospective review of Rule 3110 (Supervision), governing annual compliance meetings to assess its effectiveness and efficiency. This *Notice* outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with this specific rule.

Questions regarding this *Notice* should be directed to:

- ▶ Kosha Dalal, Associate Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6903 or Kosha.Dalal@finra.org;
- ▶ Sarah Kwak, Assistant General Counsel, OGC, at (202) 728-8471 or Sarah.Kwak@finra.org; or
- ▶ Lori Walsh, Deputy Chief Economist, Office of the Chief Economist, at (202) 728-8323 or Lori.Walsh@finra.org.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by June 25, 2018.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:
Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

April 24, 2018

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management
- ▶ Training

Key Topics

- ▶ Annual Compliance Meeting

Referenced Rules & Notices

- ▶ FINRA Rule 3110
- ▶ NTM 99-45
- ▶ NTM 05-44

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.¹

Background & Discussion

FINRA believes that it is appropriate, after a reasonable period of time, to look back at its significant rulemaking to determine whether a FINRA rule or rule set² is meeting its intended investor-protection objectives by reasonably efficient means. FINRA further believes that a retrospective review should include a review not only of the substance and application of a rule or rule set, but also FINRA's processes to administer the rules. FINRA intends to select relevant rules and to conduct retrospective rule reviews on an ongoing basis to ensure that its rules remain relevant and appropriately designed to achieve their objectives, particularly in light of environmental, industry and market changes.

In conducting the review, FINRA staff will follow a similar process to previous retrospective rule reviews. In general, the review process consists of an assessment and action phase. During the assessment phase, FINRA will evaluate the efficacy and efficiency of the rule or rule set as currently implemented, including FINRA's internal administrative processes. FINRA will seek input from affected parties and experts, including its advisory committees, subject-matter experts inside and outside of the organization, and other stakeholders, including industry members, investors, interested groups and the public. FINRA staff will assess issues including the existence of duplicative, inconsistent or ineffective regulatory obligations; whether market or other conditions have changed to suggest there are ways to improve the efficiency or effectiveness of a regulatory obligation without loss of investor protections; and potential gaps in the regulatory framework. Upon completion of this assessment, FINRA staff will consider appropriate next steps, which may include some or all of the following: modifications to the rule, updated or additional guidance, administrative changes or technology improvements, or additional research or information gathering.

The action phase will then follow. To the extent action involves modification of rules, FINRA will separately engage in its usual rulemaking process to propose amendments to the rules based on the findings. This process will include input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a *Regulatory Notice* or rule filing with the SEC, or both.

Request for Comment

FINRA has identified Rule 3110(a)(7) and Supplementary Material .04 (Annual Compliance Meeting) for review. Rule 3110(a)(7) requires each registered representative and registered principal to participate, at least once each year, in an interview or meeting at which compliance matters relevant to the particular representative or principal are discussed. Supplementary Material .04 provides that a firm is not required to conduct in-person meetings with each registered person or groups of registered persons to comply with the annual compliance meetings (or interviews) required by Rule 3110(a)(7).³ However, a firm that chooses to conduct compliance meetings using other methods (*e.g.*, on-demand webcast or course, video conference, interactive classroom setting, telephone or other electronic means) must ensure, at a minimum, that each registered person attends the entire meeting. For example, the firm might use an on-demand annual compliance webcast requiring each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the webcast, provide click-as-you-go confirmation and have an attestation of completion at the end of a webcast. The firm also must ensure that registered persons are able to ask questions regarding the presentation and receive answers in a timely fashion. For example, a firm could host an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the firm's intranet site.

FINRA seeks answers to the following questions with respect to these rules:

1. Has the rule effectively addressed the problem(s) it was intended to mitigate? To what extent has the original purposes of and need for the rule been affected by subsequent changes to the markets, the delivery of financial services, the applicable regulatory framework, or other considerations? Are there alternative ways to achieve the goals of the rule that FINRA should consider?
2. What has been your experience with implementation of the rule, including any ambiguities in the rule or challenges to comply with them?
3. What have been the economic impacts, including costs and benefits, from conducting compliance meetings? Has the rule furthered the supervision of registered persons, and are the benefits of compliance meetings commensurate with their costs? To what extent do the costs and benefits relate to the business attributes of the firm, such as its size and business model? Has the rule led to any negative unintended consequences?
4. Are compliance meetings held in-person or by other methods (*e.g.*, on-demand webcast or course, video conference, interactive classroom setting, telephone or other electronic means)? To what extent is the method chosen dependent on the business attributes of the firm? Which methods are the most effective to conduct a compliance meeting?

5. What are the costs and benefits to conduct compliance meetings either in-person or using other methods (*e.g.*, on-demand webcast or course, video conference, interactive classroom setting, telephone or other electronic means)? Relative to conducting meetings in-person, to what extent do the other methods decrease costs or increase efficiency? When using the other methods to conduct compliance meetings, are firms able to use existing, internal technologies? Is a firm's ability to use existing, internal technologies dependent on the business attributes of the firm?
6. Can FINRA make the rules, interpretations or attendant administrative processes more efficient and effective? Are there alternatives to the rule that would better communicate compliance obligations to registered persons or would reduce its costs?

In addition to comments responsive to these questions, FINRA invites comment on any other aspects of the rule that commenters wish to address. FINRA further requests any data or evidence in support of comments. While the purpose of this Notice is to obtain input as to whether or not the current rule is effective and efficient, FINRA also welcomes specific suggestions as to how the rule should be changed. As discussed above, FINRA will separately consider during the action phase specific changes to the rules.

Endnotes

1. Persons submitting comments are cautioned that FINRA does not redact or edit personal identifying information, such as names or email addresses, from comment submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.
3. *See* Rule 3110.04 (Annual Compliance Meeting); *see also* Notices to Members 99-45 (June 1999) and 05-44 (June 2005); *see also* [letter from Afshin Atabaki](#), FINRA, to Evan Charkes, Citigroup Global Markets, Inc., dated November 30, 2006 (firms may use on-demand webcast technology to satisfy the annual compliance meeting requirement, subject to specified safeguards and conditions); [letter from Afshin Atabaki](#), FINRA, to S. Kendrick Dunn, Pacific Select Distributors, Inc., dated February 5, 2013 (firms may use on-demand course without voice narration to satisfy annual compliance meeting requirement, subject to specified safeguards and conditions).