

Annual Compliance Meetings

Retrospective Rule Review Report and Guidance

Summary

In April 2018, FINRA launched a retrospective review of the annual compliance meeting (ACM) requirement in Rule 3110(a)(7) and corresponding Supplementary Material .04 (SM .04), to assess its effectiveness and efficiency.¹ The review is part of an ongoing initiative to periodically look back at a rule or set of rules to ensure they remain relevant and appropriately designed to achieve their regulatory objectives, particularly in light of industry, market and technology changes.

Based on the assessment, which involved feedback from both internal stakeholders and a wide range of external stakeholders, FINRA has determined to maintain the requirement without change. This *Notice* summarizes the review process, the predominant themes that emerged from stakeholder feedback and the basis for the determination.² While the review confirmed the continuing importance of Rule 3110(a)(7), some stakeholders asked for some clarifying guidance concerning the various ways in which annual compliance meetings may be conducted. That guidance is also set forth in this *Notice*.

Questions regarding this *Notice* should be directed to:

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Background & Discussion

Rule Requirements

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 their particular activities are discussed. The requirement gives registered persons the opportunity to regularly discuss compliance issues and assists the firm in ensuring that registered persons remain current on applicable regulatory developments or changes in firm policies.

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Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal

Registered Representatives

- ▶ Senior Management
- ▶ Training

Key Topics

- ▶ Annual Compliance Meeting
- ▶ Supervision
- ▶ Referenced Rules & Notices
- ▶ FINRA Rule 1240
- ▶ FINRA Rule 3110
- ▶ Notices to Members 89-34 and 99-45
- ▶ Regulatory Notices 18-14 and 18-26

Rule 3110(a)(7) has been in place since the late 1980s in connection with the larger effort that FINRA (then NASD) had undertaken at that time to substantially expand and specify the baseline attributes that a supervisory system of a firm must have regardless of its size or business model or lines of business.³ Since then, the core substance of Rule 3110(a)(7) has been preserved, supplemented by some guidance to clarify that the meeting need not be in-person by providing firms some flexibility in the manner and form of these meetings. As described further below, this flexibility has been codified in SM .04,⁴ which generally provides that a firm may conduct ACMs with each registered person or groups of registered persons through various mediums such as video conference, interactive classroom setting, telephone or other electronic means, provided that certain safeguards are in place.

Assessment

The retrospective review process has two phases: the assessment phase and the action phase. During the assessment, FINRA staff evaluate whether the rule is meeting its investor protection objectives by reasonably efficient means. The subsequent action phase effectuates any recommendations arising from the assessment, which could include, among others, changes to the rule or its administration.

However, not every assessment results in rule changes—the assessment may conclude that the rule remains relevant and appropriately tailored to meet its objectives. To conduct this assessment, FINRA first sought feedback from all interested external stakeholders through a request for comment in *Regulatory Notice 18-14*. FINRA received eight comment letters from a cross-section of stakeholders.⁵ FINRA also obtained input from several of its advisory committees, comprising firms of different sizes and business models and investor protection advocates, and from trade organizations that included in one case a committee of registered representatives. FINRA also obtained the perspective of its operating departments, most notably Member Supervision. Finally, FINRA distributed a confidential survey to all member firms to validate the feedback received and to provide an additional opportunity for all members to provide input on the effectiveness and efficiency of the ACM requirement, including specific questions about benefits and costs and burdens associated with conducting such meetings.⁶

A few key themes emerged during the assessment. First, the majority of stakeholders viewed the ACM as an important component of a preventive compliance program that promotes a culture of compliance in a cost-effective manner. Second, many stakeholders suggested that FINRA provide updated guidance on the flexibility concerning the methods or manner by which an ACM may be conducted. Third, members requested additional guidance on the topics that should be discussed at an ACM. Finally, several stakeholders suggested that FINRA consider whether the ACM and Firm Element Continuing Education requirements can be streamlined to avoid duplication and minimize burdens on firms.

The ACM is a Beneficial Component of a Firm's Compliance Program

Most stakeholders were in favor of retaining the compulsory nature of the ACM, many noting that there is value in having a rule that provides compliance personnel with the mandate to require registered persons to focus on compliance matters. The survey validated this view. Approximately 76 percent of the survey respondents indicated that the ACM was an important part of a preventive compliance program. The survey also showed that the benefits associated with conducting ACMs were equal to or greater than their costs, and most stakeholders agreed that the value of ACMs was worth the time it takes to conduct them.

Flexibility in the Manner by Which a Firm May Conduct the ACM

Stakeholders suggested FINRA should consider providing more flexibility in how compliance information is delivered. SM .04 explains that a firm is not required to conduct in-person meetings (or interviews) with each registered person or groups of registered persons in order to comply with the ACM requirement.⁷ Under SM .04, a member that chooses to conduct compliance meetings using other methods such as 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, per the rule, a firm might use on-demand annual compliance webcast requiring each registered person to use a unique user identification 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. Another example is that a firm could host an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a presenter, a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the firm's intranet site.

The current rule language is intended to provide considerable flexibility in how a firm chooses to satisfy the delivery requirement. FINRA emphasizes that the examples set forth in SM .04 are for illustrative purposes only and are not intended to preclude other means of delivery as technological innovations emerge. Thus, for example, a firm could conduct its compliance meetings through any of the current virtual meeting room applications, even though they are not given as specific examples in SM .04.

Topics to Discuss at a Compliance Meeting

Some stakeholders also asked that FINRA provide guidance on the topics that should be discussed at a compliance meeting. They further suggested that FINRA should consider creating a checklist of topics appropriate to discuss at an ACM that could be derived from common examination findings, customer complaints, and other relevant sources.

Soon after the adoption of Rule 3110(a)(7) (formerly, NASD Rules of Fair Practice Section 27(a)(7)), FINRA addressed a question concerning the topics to be discussed at a compliance meeting. At that time, FINRA had indicated that it would not be possible to provide an exhaustive list of the topics that should be addressed at a compliance meeting.⁸ FINRA continues to maintain this view. The purpose of the compliance meeting is to provide firms with the opportunity to review compliance matters relevant to the particular registered person. Those relevant matters, in turn, will depend on the business of each firm and the particulars of their compliance policies and procedures. Through this meeting (or meetings, if they are conducted more frequently than annually), registered persons have the opportunity to regularly discuss compliance issues. In addition, these meetings provide a way for firms to ensure that their registered persons remain current on regulatory developments, firm policies or other matters as appropriate.⁹

Currently, FINRA provides many resources from which a firm may draw to devise suitable topics to discuss with its registered persons, particularly as they relate to regulatory developments. Compliance resources may include FINRA publications such as the annual Risk Monitoring and Examination Priorities Letter, Report on Examination Findings and Investor Alerts, among others. FINRA will look to identify and communicate to firms additional resources for ACM content.

Coordinate the ACM Requirement with Continuing Education Training Requirements

The Securities Industry/Regulatory Council on Continuing Education (CE Council), in partnership with FINRA and other self-regulatory organizations, is currently exploring a number of opportunities to improve the effectiveness and efficiency of the Continuing Education (CE) program. Included in this effort is assessing how the ACM requirement may be coordinated with CE training requirements.¹⁰ FINRA intends to continue working closely with the CE Council to assess the feedback received from firms on, among other things, identifying potential redundancies in training requirements.

Conclusion

Based on the foregoing, FINRA believes that Rule 3110(a)(7) continues to meet its regulatory objectives effectively and efficiently. Accordingly, FINRA has determined to maintain the rule in its current form. However, FINRA will continue to monitor potential impacts to Rule 3110(a)(7) and SM .04 in light of the ongoing review of the potential enhancements to the CE Program.

Endnotes

1. See *Regulatory Notice 18-14* (April 24, 2018). In response to the *Notice*, FINRA received eight comment letters from: “ABC” (anonymous) (June 24, 2018); Eric Arnold and Clifford Kirsch, Sutherland Asbill & Brennan, LLP, for the Committee of Annuity Insurers (June 25, 2019); Nanette K. Chern and Susan K. Moscaritolo, Foreside (June 25, 2018); EFS Advisors (May 1, 2018); Alex Krenke, Quest CE (June 26, 2018); James Rabenstine, Nationwide Financial Services, Inc. (June 21, 2019); Robin Traxler, Financial Services Institute (June 25, 2018); and Kevin Zambrowicz, SIFMA (June 25, 2018).
2. The term “stakeholder” is used to describe those entities, organizations and persons who may be impacted by or otherwise have an interest in Rule 3110(a)(7). For example, FINRA conferred with the Investor Issues Committee, Large Firm Advisory Committee, Membership Committee and Small Firm Advisory Committee at their respective meetings, and conducted interviews with the Financial Services Institute and the American Securities Association.
3. See Securities Exchange Act Release No. 26177 (October 13, 1988), 53 FR 41008 (October 19, 1988) (Order Approving File No. SR-NASD-88-31) and Securities Exchange Act Release No. 51605 (April 25, 2005), 70 FR 22732 (May 2, 2005) (Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Compliance Meetings; File No. SR-NASD-2005-004) (to require that all registered principals, in addition to registered representatives, attend an annual compliance meeting).
4. See Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2014) (Order Approving Proposed Rule Change as Modified by Amendment No. 1; File No. SR-FINRA-2013-025).
5. See *supra* note 1.
6. The majority of the respondents identified themselves as a chief compliance officer or senior compliance staff. Most of these compliance personnel characterized their firm’s business model as an independent broker-dealer, and others identified their firm as either a full service broker-dealer or a product-focused firm. Respondents’ descriptions of their business lines included, among others, equity or fixed income securities, variable insurance products, mutual funds and private placements.
7. See *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).
8. See *Notice to Members 89-34* (April 1989).
9. See *generally Notice to Members 99-45* (June 1999).

10. Many stakeholders suggested harmonizing the ACM requirement under Rule 3110(a)(7) and the Firm Element training requirement under Rule 1240 (Continuing Education Requirements) in a manner that would allow firms and registered persons to meet the ACM requirement through the Firm Element continuing education requirement, which would conceivably reduce some redundancies and administrative burdens. *See also Regulatory Notice 18-26* (September 6, 2018) (requesting comment on enhancements under consideration by the CE Council). In connection with potential CE program enhancements, FINRA is separately developing a proposal to, among other things, expressly provide that member firms may consider training relating to the ACM towards satisfying an individual's annual Firm Element requirement.