



March 2023

Firm Element Needs Analysis Quarterly Highlights

Formerly Known as Firm Element Advisory

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Introduction

The Securities Industry/Regulatory Council on Continuing Education (Council) publishes the Firm Element Needs Analysis Quarterly Highlights to assist industry participants with identification of potential topics to include in Firm Element training plans. Topics are identified from a review of industry, regulatory and self-regulatory organization (SRO) announcements, publications of significant events, and the annual report from FINRA's Examination and Risk Monitoring Program.

The Council suggests that firms use the Firm Element Needs Analysis Quarterly Highlights as an aid in evaluating and prioritizing their Firm Element needs and developing written training plans.

Firms are reminded not to rely on the Firm Element Needs Analysis Quarterly Highlights as a comprehensive list of all areas they should consider. The Council recommends using all available tools to make Firm Element planning as efficient and effective as possible.

For more information, contact

cecounciladmin@finra.org

Q1 2023 New Content Quick Reference

- [FINRA Regulatory Notice 23-02 \(January 18, 2023\)](#): FINRA Amends FINRA Rule 2231
- [FINRA Regulatory Notice 22-31 \(December 15, 2022\)](#): FINRA Shares Practices for Obtaining Customers' Trusted Contacts
- [FINRA Regulatory Notice 22-29 \(December 14, 2022\)](#): FINRA Alerts Firms to Ransomware Risks
- [FINRA Regulatory Notice 22-28 \(December 13, 2022\)](#): TRACE Reporting of Foreign Sovereign Debt Securities
- [FINRA Regulatory Notice 22-27 \(December 1, 2022\)](#): FINRA Adopts Enhancements to Trace Reporting for U.S. Securities
- [FINRA Regulatory Notice 22-25 \(November 17, 2022\)](#): FINRA Alerts Firms to Recent Trend in Small Capitalization IPOs

Firm Operations

Book & Records

(New) Customer Account Statements

FINRA has adopted amendments to Rule 2231 (Customer Account Statements) to add eight new supplementary materials pertaining to:

- compliance with Rule 4311 (Carrying Agreements);
- the transmission of customer account statements to other persons or entities;
- the use of electronic media to satisfy delivery obligations;
- compliance with Rule 3150 (Holding of Customer Mail);
- the information disclosed on customer account statements;
- assets externally held;
- the use of logos and trademarks, etc.; and
- the use of summary statements.

Several of these new supplementary materials are derived largely from Temporary Dual FINRA-NYSE Rule 409T (Statements of Accounts to Customers) and Temporary Dual FINRA-NYSE Rule Interpretation 409T, which will be deleted as a result of amended Rule 2231. These changes become effective on January 1, 2024.

- [FINRA Regulatory Notice 23-02 \(January 18, 2023\)](#): FINRA Amends FINRA Rule 2231

Electronic Recordkeeping Requirements

The SEC adopted amendments to the recordkeeping rules applicable to broker-dealers, security-based swap dealers, and major security-based swap participants. The amendments modify requirements regarding the maintenance and preservation of electronic records, the use of third-party recordkeeping services to hold records, and the prompt production of records. The Commission also is designating broker-dealer examining authorities as Commission designees for purposes of certain provisions of the broker-dealer record maintenance and preservation rule. The effective date was January 3, 2023. The compliance date for the amendments to 17 CFR 240.17a-4 is May 3, 2023. The compliance date for the amendments to 17 CFR 240.18a-6 is November 3, 2023.

- [SEC Release No. 34-96034; File No. S7-19-21 \(October 12, 2022\)](#): Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants

Business Continuity Planning

Succession Planning

Member firms often encourage registered representatives to have succession plans in place to plan for expected or unexpected life events. Succession planning can benefit customers, member firms and registered representatives. This Notice discusses these benefits, as well as common types of succession plans. This Notice also provides an overview of related FINRA rules and administrative processes and includes questions to consider when developing and implementing succession plans.

- [FINRA Regulatory Notice 22-23 \(November 1, 2022\)](#): FINRA Provides Guidance on Succession Planning

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Cybersecurity and Technology Governance

(New) Ransomware

FINRA has received reports about increasing numbers and sophistication of ransomware incidents. Ransomware typically involves bad actors gaining unauthorized access to firm systems and encrypting or otherwise accessing sensitive firm data or customer information, then holding that hijacked data for ransom. Some ransomware attacks have become significant threats that include theft of data and bad actors' ongoing network access.

Ransomware attacks have proliferated due to, in part, increased use of technology and continued adoption of cryptocurrencies, which bad actors use to hide their identities when collecting ransom payments. Further, Ransomware-as-a-Service (RaaS) models, where bad actors purchase attack services on the dark web,¹ have helped execute attacks on a much larger scale and make attacks available to less technologically savvy bad

actors.

Rule 30 of the U.S. Securities and Exchange Commission’s (SEC) Regulation S-P requires firms to have written policies and procedures that are reasonably designed to safeguard customer records and information. [FINRA Rule 4370 \(Business Continuity Plans and Emergency Contact Information\)](#) also applies to ransomware attacks that include denials of service and other interruptions to members’ operations.

- [FINRA Regulatory Notice 22-29 \(December 14, 2022\)](#): FINRA Alerts Firms to Ransomware Risks

(New) Heightened Threat of Fraud

FINRA alerts members to an emerging threat to customers and members, where FINRA, NASDAQ and NYSE have observed initial public offerings (IPOs) for certain small capitalization (small-cap) issuers listed on U.S. stock exchanges that may be the subject of pump-and-dump-like schemes (sometimes referred to as “ramp-and-dump” schemes in other jurisdictions). FINRA has observed significant unusual price increases on the day of or shortly after the IPOs of certain small-cap issuers, most of which involve issuers with operations in other countries. FINRA has concerns regarding potential nominee accounts that invest in the small-cap IPOs and subsequently engage in apparent manipulative limit order and trading activity. Some of the investors harmed by ramp-and-dump schemes appear to be victims of social media scams. This Notice addresses concerns similar to those previously raised in the Anti-Money Laundering sections of the 2022 and 2021 Reports on FINRA’s Examination and Risk Monitoring Program.

- [FINRA Regulatory Notice 22-25 \(November 17, 2022\)](#): FINRA Alerts Firms to Recent Trend in Small Capilization IPOs

Trusted Contact Person

(New) FINRA Shares Practices for Obtaining Customers’ Trusted Contacts

Member firms are required to make reasonable efforts to obtain the name of and contact information for a trusted contact for a non-institutional customer’s account. This Notice summarizes member firms’ regulatory obligations, discusses the benefits of trusted contacts in administering customers’ accounts, highlights customer education resources and shares effective practices member firms use.

- [FINRA Regulatory Notice 22-31 \(December 15, 2022\)](#): FINRA Shares Practices for Obtaining Customers’ Trusted Contacts

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Senior Investors

Senior Investors

FINRA has adopted amendments to Rule 2165 (Financial Exploitation of Specified Adults) to permit member firms to: (1) place a hold on a securities transaction (in addition to the already-permitted hold on a disbursement of funds or securities) where there is a reasonable belief of financial exploitation; and (2) extend a temporary hold on a disbursement or transaction for an additional 30 business days, beyond the current maximum of 25 business days (for a total of 55 business days), if the member firm has reported the matter to a state regulator or agency, or a court of competent jurisdiction. The amendments to Rule 2165 became effective

on March 17, 2022.

- [FINRA Regulatory Notice 22-05 \(February 15, 2022\)](#): FINRA Adopts Amendments to FINRA Rule 2165

Sales & Trading

Sales Practice

Alternative Mutual Funds

Recently, FINRA took enforcement action against several firms for failing to establish or maintain a reasonably designed supervisory system for recommendations of alternative mutual funds, also sometimes referred to as “alt funds” or “liquid alts” (“Alt Funds”). FINRA is continuing to note such deficiencies in its examinations and communications reviews of such products.

This Notice reminds member firms of their sales practice and supervisory obligations for such funds, and, to that end:

- describes frequent findings in recent examinations and enforcement matters;
 - shares effective practices FINRA observed at member firms; and
 - notes considerations member firms may wish to take into account to improve their supervisory and compliance programs.
- [FINRA Regulatory Notice 22-11 \(April 19, 2022\)](#): FINRA Reminds Firms of Their Sales Practice Obligations for Alternative Mutual Funds

Rules to Address Firms with a History of Misconduct

FINRA has adopted new rules to address firms with a significant history of misconduct. New Rule 4111 (Restricted Firm Obligations) requires member firms that are identified as “Restricted Firms” to deposit cash or qualified securities in a segregated, restricted account; adhere to specified conditions or restrictions; or comply with a combination of such obligations. New Rule 9561 (Procedures for Regulating Activities Under Rule 4111) and amendments to Rule 9559 (Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series) establish a new expedited proceeding to implement Rule 4111. The new rules and rule amendments became effective on January 1, 2022. The first “Evaluation Date” for Rule 4111 was June 1, 2022

- [FINRA Information Notice February 1, 2022](#): FINRA Announces Rule 4111 (Restricted Firm Obligations) Evaluation Date
- [FINRA Regulatory Notice 21-34 \(September 28, 2021\)](#): FINRA Adopts Rules to Address Firms with a Significant History of Misconduct
- [FINRA Regulatory Notice 21-09 \(March 10, 2021\)](#): FINRA Adopts Rules to Address Brokers with a Significant History of Misconduct

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Options

Prearranged Trading & Signaling of Imminent Orders

Various national securities exchanges have recently issued notices to their members cautioning them that, among other things, the use of orders or quotes to signal the arrival of an order or otherwise to coordinate order flow with another market participant may violate applicable Exchange Rules, as well as various provisions of the Securities Exchange Act of 1934, as amended and rules thereunder.

- [BOX Options RC-2022-21 \(August 1, 2022\)](#): Prearranged Trading and Signaling of Imminent Order
- [Cboe Regulatory Circular 22-014 \(September 26, 2022\)](#): Prearranged Trading and Signaling of Imminent Orders
- [MIAX Options Regulatory Circular 2022-47 \(August 4, 2022\)](#): Prearranged Trading
- [Nasdaq Options Regulatory Alert #2022-22 \(July 27, 2022\)](#): Prearranged Trading and Signaling of Imminent Orders

Options Customer Account Approval and Supervision

With the recent launch of NANOS on Cboe Exchange, Inc., the Cboe-affiliated Options Exchanges reminded their members of the approval requirements for customers seeking to trade options in their accounts. Members are prohibited from accepting orders from a customer to purchase or write an option contract unless the customer's account has been approved for options transactions in accordance with the provisions set forth in the Exchanges' rules governing the opening of accounts.

- [CBOE Regulatory Circular 22-007 \(March 15, 2022\)](#): Option Customer Account Approval and Supervision

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Municipal Securities

MSRB Applies Regulation Best Interest to Bank-Dealers and Amends the Quantitative Suitability Standard for Institutional SMMPs

The Municipal Securities Rulemaking Board (MSRB) received approval from the SEC on June 23, 2022, for amendments to MSRB Rule G-19, on suitability of recommendations and transactions, and MSRB Rule G-48, on transactions with sophisticated municipal market professionals (SMMPs). The amendments align Rule G-19 to the Commission's Rule 15l-1 under the Exchange Act ("Regulation Best Interest") for certain municipal securities activities of bank dealers (the "Bank Dealer Amendment"). The approved amendments to Rule G-48 modify the quantitative suitability obligation of brokers, dealers, and municipal securities dealers (collectively, "dealers") for certain institutional SMMP customers (the "Quantitative Suitability Amendment"). The compliance date for the Quantitative Suitability Amendment was August 1, 2022. The compliance date for the Bank Dealer Amendment is August 1, 2023.

- [MSRB Regulatory Notice 2022-04 \(June 24, 2022\)](#): MSRB Applies Regulation Best Interest to Bank-Dealers and Amends the Quantitative Suitability Standard for Institutional SMMPs

Market Integrity

Fraud

Heightened Threat of Fraud

FINRA alerts member firms to a rising trend in the fraudulent transfer of customer accounts through the Automated Customer Account Transfer Service (ACATS), an automated system administered by the National Securities Clearing Corporation (NSCC), that facilitates the transfer of customer account assets from one firm to another.

This Notice provides an overview of how bad actors effect fraudulent transfers of customer accounts using ACATS (referred to as ACATS fraud), lists several existing regulatory obligations that may apply in connection with ACATS fraud, and provides contact information for reporting the fraud. As FINRA continues to gather additional information related to ACATS fraud, FINRA is committed to providing guidance, updates and other information to help member firms stay informed about the latest developments, and will supplement this Notice, as appropriate.

- [FINRA Regulatory Notice 22-21 \(October 6, 2022\)](#): FINRA Alerts Firms to Recent Trend in Fraudulent Transfers of Accounts through ACATS

Digital Signatures

FINRA has received an increasing number of reports regarding registered representatives and associated persons (representatives) forging or falsifying customer signatures, and in some cases signatures of colleagues or supervisors, through third-party digital signature platforms. Firms have, for example, identified signature issues involving a wide range of forms, including account opening documents and updates, account activity letters, discretionary trading authorizations, wire instructions and internal firm documents related to the review of customer transactions. These types of incidents underscore the need for member firms that allow digital signatures to have adequate controls to detect possible instances of signature forgery or falsification. To help firms address the risks these signature forgeries and falsifications present, FINRA is sharing information in this Notice about:

- relevant regulatory obligations;
 - forgery and falsification scenarios firms have reported to FINRA; and
 - methods firms have used to identify those scenarios.
- [FINRA Regulatory Notice 22-18 \(August 3, 2022\)](#): FINRA Reminds Firms of Their Obligation to Supervise for Digital Signature Forgery and Falsification

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Prohibited Practices

FINRA Sanction Guidelines

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.
- [FINRA Regulatory Notice 22-20 \(September 29, 2022\)](#): The National Adjudicatory Council (NAC) Revises the Sanction Guidelines

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Trade Practices

FINRA Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6120 (Trading Halts)

FINRA amended FINRA Rule 6120 (Trading Halts) to conform to recent amendments to the NMS plans governing the collection, consolidation and dissemination of quotation and transaction information for NMS stocks and to make technical and clarifying changes to the rule.

- [Securities Exchange Act Release No. 95191 \(June 30, 2022\), 87 FR 40571 \(July 7, 2022\)](#): Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6120 (Trading Halts) to Conform to Recent Amendments to the SIP Plans and to Make Technical and Clarifying Changes to the Rule

Order Granting Approval of a Proposed Rule Change to Amend the Provisions of NYSE Rule 7.35B

Effective June 10, 2022, the NYSE amended Rule 7.35B relating to the cancellation of Market-on-Close (“MOC”), Limit-on-Close (“LOC”) and Closing Imbalance Offset (“Closing IO”) Orders before the NYSE Closing Auction. As a result of the change, on days when Core Trading Hours end at 4 p.m. ET, MOC, LOC, and Closing IO Orders will no longer be cancelable or changeable after 3:50 p.m.

Former NYSE Rule 7.35B(f)(2) provided that, between the Closing Auction Imbalance Freeze Time and two minutes before the scheduled end of the Core Trading Hours, MOC, LOC, and Closing IO Orders could be canceled, replaced or reduced in size only to correct a Legitimate Error. In addition, with limited exceptions under the prior rule, a request to cancel, replace, or reduce in size a MOC, LOC, or Closing IO Order entered two minutes or less before the scheduled end of the Core Trading Hours would be rejected. NYSE Rule 7.35B(f)(2) now specifies that any requests to cancel, replace, or reduce in size a MOC, LOC, or Closing IO Order that are entered between the beginning of the Closing Auction Imbalance Freeze and the scheduled end of Core Trading Hours are to be rejected. Thus, a request to cancel, replace, or reduce in size a MOC, LOC, or Closing IO Order will now be rejected unless it is received by the Exchange before the beginning of the Closing Auction Imbalance Freeze (i.e., ten minutes prior to the scheduled end of Core Trading Hours), even if the cancellation, replacement, or reduction in size is entered to correct a Legitimate Error.

- [NYSE RM-22-08 \(July 17 2022\)](#): Order Granting Approval to Amend the Provision of NYSE Rule 7.35B

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Trade Reporting

(New) FINRA Adopts Amendments to Require Reporting of Transactions in U.S. Dollar-Denominated Foreign Sovereign Debt Securities to TRACE

FINRA has adopted amendments to the Rule 6700 Series to require firms to report transactions in U.S. dollar-denominated foreign sovereign debt securities to TRACE. “Foreign sovereign debt security” is defined as a debt security that is issued or guaranteed by the government of a foreign country, any political subdivision of a foreign country or a supranational entity. Transaction reports in U.S. dollar-denominated foreign sovereign debt securities will not be subject to public dissemination.

Transactions in U.S. dollar-denominated foreign sovereign debt securities generally will be subject to a same-day reporting requirement. Specifically, reportable TRACE transactions in U.S. dollar-denominated foreign sovereign debt securities executed on a business day at or after 12:00 a.m. Eastern Time (ET) through 5:00 p.m. ET must be reported the same day during TRACE system hours. Transactions executed on a business day after 5:00 p.m. ET but before the TRACE system closes must be reported no later than the next business day (T+1) during TRACE system hours, and, if reported on T+1, designated “as/of” and include the date of execution. Firms that wish to report transactions in U.S. dollar-denominated foreign sovereign debt securities on an immediate basis may do so. These amendments become effective date on November 6, 2023.

- [FINRA Regulatory Notice 22-28 \(December 13, 2022\)](#): TRACE Reporting of Foreign Sovereign Debt Securities

(New) FINRA Adopts Enhancements to TRACE Reporting for U.S Treasury Securities

FINRA has adopted amendments to Rule 6730 (Transaction Reporting) to: (i) require members to report transactions in U.S. Treasury securities to FINRA’s Trade Reporting and Compliance Engine (TRACE) as soon as practicable but no later than 60 minutes from the time of execution; and (ii) require members to report electronically executed transactions in U.S. Treasury securities to TRACE in the finest increment captured by the system used to execute the transaction, subject to an exception for members with limited trading volume in U.S. Treasury securities. FINRA is also revising its TRACE Frequently Asked Questions (FAQs) to standardize price reporting for Treasury bills and Floating Rate Notes (FRNs) by requiring all transactions to be reported using the dollar price. The amendments to reduce the trade reporting timeframe for transactions in U.S. Treasury securities will take effect on May 15, 2023. The amendments related to the granularity of execution timestamps, as well as the revisions to the TRACE FAQs to standardize price reporting, will take effect on November 6, 2023.

- [FINRA Regulatory Notice 22-27 \(December 1, 2022\)](#): FINRA Adopts Enhancements to TRACE Reporting for U.S. Treasury Securities

Exemption From Trade Reporting Obligation for Certain Transactions on Alternative Trading Systems

FINRA has adopted amendments to Rule 6732 (Exemption from Trade Reporting Obligation for Certain Transactions on an Alternative Trading System) to expand the scope of the exemption to include eligible ATS transactions that involve only one member (other than the ATS). As amended, a member ATS may apply for the exemption for transactions between a member subscriber and a non-member entity (e.g., a bank). The amendments to Rule 6732 became effective on October 3, 2022.

- [FINRA Regulatory Notice 22-13 \(June 14, 2022\)](#): Exemption From Trade Reporting Obligation for Certain Transaction on Alternative Trading Systems

FINRA Adopts Amendments to TRACE Reporting Rule to Require Identification of Portfolio Trades

FINRA has adopted amendments to Rule 6730 (Transaction Reporting) to require members to append a modifier to a corporate bond trade that is part of a portfolio trade when reporting to FINRA's Trade Reporting and Compliance Engine (TRACE). The amendments to Rule 6730 become effective on May 15, 2023.

- [FINRA Regulatory Notice 22-12 \(May 15, 2022\)](#): FINRA Adopts Amendments to TRACE Reporting Rule to Require Identification of Portfolio Trades

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Additional Resources

- For more information visit the cecouncil.com website or contact CE Council member organizations.
- For compliance resources on issues affecting the security issue please visit [FINRA Key Topics](#) page.