



September 2023

# Firm Element Needs Analysis Quarterly Highlights

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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, and the adoption by the U.S. Securities and Exchange Commission (SEC or Commission) of new rules or amendments.

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](mailto:cecounciladmin@finra.org)

## New Content Quick Reference

- [MSRB Regulatory Notice 2023-06 \(May 30, 2023\)](#): MSRB Adopts Amendments to Rules G-12 and G-15, Shortening Regular-Way Settlement Transactions to T+1
- [SEC Release No. 33-11216; 34- 97989; File No. S7-09-22 \(July 26, 2023\)](#): Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure

# Firm Operations

## Book & Records

### 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 was 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 (Final Rule)
- FINRA Guidance: [Exchange Act Rule 17a-4 Amendments Chart of Significant Changes](#)

### Customer Account Statements

FINRA 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

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## Cybersecurity and Technology Governance

### **(New) Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure**

The Commission is adopting new rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and incidents by public companies that are subject to the reporting requirements of the Securities Exchange Act of 1934. Specifically, we are adopting amendments to require current disclosure about material cybersecurity incidents. We are also adopting rules requiring periodic disclosures about a registrant’s processes to assess, identify, and manage material cybersecurity risks, management’s role in assessing and managing material cybersecurity risks, and the board of directors’ oversight of cybersecurity risks. Lastly, the final rules require the cybersecurity disclosures to be presented in Inline eXtensible Business Reporting Language (“Inline XBRL”).

The amendments are effective September 5, 2023.

- [SEC Release No. 33-11216; 34-97989; File No. S7-09-22 \(July 26, 2023\)](#): Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure

### **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, have helped execute attacks on a much larger scale and make attacks available to less technologically savvy bad actors.

Rule 30 of the 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

**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

**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

### Private Placements

#### **FINRA Reminds Members of Their Obligation When Selling Private Placements**

This Notice highlights a member's obligation, when recommending a security, to conduct a reasonable investigation of the security. This duty has long been rooted in the antifraud provisions of the federal securities laws and is a core component of a broker-dealer's obligations under SEC Regulation Best Interest (Reg BI) and FINRA Rule 2111 (Suitability), the fundamental standards that members must meet when recommending securities. This Notice also addresses certain additional obligations for members when selling private placements, including FINRA's filing requirements and its communications with the public and supervision rules.

- [FINRA Regulatory Notice 23-08 \(May 9, 2023\)](#): FINRA Reminds Members of Their Obligation When Selling Private Placements

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### Municipal Securities

#### **(New) MSRB Adopts Amendments to Rules G-12 and G-15, Shortening Regular-Way Settlement Transaction to T+1**

The Municipal Securities Rulemaking Board (MSRB) received approval from the SEC on May 25, 2023, for amendments to MSRB Rules G-12, on uniform practice, and G-15, on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers.

The amendments approved by the Commission amend MSRB Rules G-12 and G-15 to define regular-way settlement for municipal securities transactions as occurring one business day after the trade date ("T+1") and make a technical amendment to Rule G-12 to update an outdated cross-reference. The amendments align with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6-1 ("Amended SEC Rule 15c6-1") to further shorten the settlement process, requiring the settlement of most equity and corporate bond transactions on T+1.

The compliance date for the amendments is May 28, 2024, which is aligned with the implementation date for Amended SEC Rule 15c6-1.

- [MSRB Regulatory Notice 2023-06 \(May 30, 2023\)](#): MSRB Adopts Amendments to Rules G-12 and G-15, Shortening Regular-Way Settlement for Municipal Securities Transactions to T+1

#### **SEC Approves New MSRB Rule G-46 on Duties of Solicitor Municipal Advisors and Related Amendments to MSRB Rule G-8**

On March 29, 2023, the MSRB received approval from the SEC to create a new rule, MSRB Rule G-46, on duties of solicitor municipal advisors and amend MSRB Rule G-8, on books and records. New MSRB Rule G-46 is designed to establish the core standards of conduct for solicitor municipal advisors when engaging in

solicitation activities that would require them to register with the SEC and the MSRB as municipal advisors. The related amendments to Rule G-8 establish recordkeeping requirements to facilitate and document compliance with the new obligations of Rule G-46.

The adoption of Rule G-46 and the related amendments to Rule G-8 furthers the MSRB's mandate to protect municipal entities, obligated persons, investors, and the public interest. The compliance date for Rule G-46 and the related amendments to Rule G-8 is March 1, 2024.

- [MSRB Regulatory Notice 2023-03 \(March 30, 2023\)](#): SEC Approves New MSRB Rule G-46 on Duties of Solicitor Municipal Advisors and Related Amendments to MSRB Rule G-8

## Market Integrity

### Fraud

#### **FINRA Shares Effective Practices to Address Risks of Fraudulent Transfers of Accounts Through ACATS**

To bring attention to a rising trend in the fraudulent transfer of customer accounts through the Automated Customer Account Transfer Service (ACATS), FINRA issued *Regulatory Notice 22-21*, which alerted member firms about how bad actors effect fraudulent transfers of customer assets using ACATS (referred to as ACATS fraud). That *Notice* listed several existing regulatory obligations that may apply in connection with ACATS fraud and provided contact information for reporting the fraud.

FINRA's regulatory programs—through examinations and investigations, review of customer complaints and member firm engagement—have identified increased instances of ACATS fraud. Through recent industry engagement, FINRA has gained further insights from member firms and other industry representatives about their approaches to detect and mitigate the risk of ACATS fraud. This *Notice* provides an overview of some indicators of ACATS fraud and the practices some firms apply to address it.

- [FINRA Regulatory Notice 23-06 \(March 28, 2023\)](#): FINRA Shares Effective Practices to Address Risks of Fraudulent Transfers of Accounts Through ACATS

#### **Heightened Threat of Fraud Through ACATS**

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

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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 Reporting

### 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

### **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

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### **Additional Resources**

- For more information visit the [ceecouncil.com](https://ceecouncil.com) website or contact CE Council member organizations.
- For compliance resources on issues affecting the security issue please visit [FINRA Key Topics](#) page.
- For insight into FINRA's findings into recent oversight activities of FINRA's Member Supervision, Market Regulation and Enforcement programs, please visit the [Report on FINRA's Examination and Risk Monitoring Program](#).