

## **Alert** | Financial Regulatory & Compliance



October 2022

### **FINRA Releases Updated Guidelines and Sanctions for Securities Rule Violations**

On Sept. 29, 2022, the Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 22-20, alerting members to changes to the *Sanctions Guidelines (Guidelines)*, effective immediately. The notice discusses changes varying from new fine ranges/minimums, additional guidelines, and non-monetary sanctions.

#### **What are the *Sanctions Guidelines*?**

The National Adjudicatory Council (NAC) developed the FINRA *Sanctions Guidelines* to assist various adjudicators in determining appropriate sanctions for securities rule violations. They are published to allow member firms and their associated persons to be informed of typical securities rule violations, along with the related ranges and types of disciplinary actions. The *Guidelines* also aid in disciplinary settlements. Though ranges for fines are included, adjudicators may still impose sanctions outside the recommended ranges and are free to consider factors other than what are included in the *Guidelines*.

#### **New Guidance**

The *Sanctions Guidelines* now differentiate between types of respondents along with the following changes:

- **Creates two new subsets of fine ranges.** One subset has guidelines applicable only to individuals while the other is applicable to firms. The subset for firms is broken down further based on firm size (small, mid-size, and large), using the definitions for these sizes found in FINRA’s by-laws.
- **Updates fine ranges to incorporate large fine amounts.** For mid-size and large firms, the *Guidelines* remove the upper limit of the fine ranges pertaining to nine of the most serious violations FINRA pursues. These violations include Sales of Unregistered Securities; 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; Excessive Markups/Markdowns and Excessive Commissions; Research Analysts and Research Reports; and Systemic Supervisory Failures.
- **New anti-money laundering (AML) guidelines.** The *Guidelines* add six anti-money laundering (AML) guidelines, including three for firms and the remaining for individuals. The guidelines now have no upper limit for fine ranges for mid-size and large firms for AML violations involving the failure to reasonably monitor to report suspicious transactions.
- The *Guidelines* introduce a single fine range for actions in the Quality of Market guidelines and other select guidelines to align with the format in other guidelines and restructure or reword seven guidelines for improved clarity and usability. The applicable guidelines are as follows:
  - 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
  - Communications With the Public—Failure to Comply with Content Standards
- **New non-monetary sanctions.** The revisions add non-monetary sanctions for adjudicators to consider, such as suspending or barring a firm from engaging in particular business lines/activities. Many of the guidelines now explicitly instruct adjudicators to consider these types of sanctions over monetary ones. Adjudicators may also consider limiting firm business lines or products offered and suspending firms from opening new customer accounts, along with additional firm requirements. The additional requirements include heightened supervision, retaining an independent consultant to design/implement procedures for improved regulatory compliance, certifications to FINRA for updated procedures or completed tasks, instituting tape-recording procedures, and obtaining “no objection” letters from FINRA staff for proposed communications with the public prior to dissemination.
- **Increased minimum fine for small firms.** The lowest fine for small firms is now \$5,000 for all guidelines.
- Finally, the *Guidelines* delete 20 prior guidelines. Though the deleted guidelines were either incorporated elsewhere or deleted altogether, members should note that enforcement may still occur under the underlying rules.

## Authors

This GT Alert was prepared by:

- **Robert Long** | +1 214.665.3659 | [longr@gtlaw.com](mailto:longr@gtlaw.com)
- **William B. Mack** | +1 212.801.2230 | [mackw@gtlaw.com](mailto:mackw@gtlaw.com)

*\* Special thanks to Leisel O. Greig for her valuable contributions to this GT Alert.*

Albany. Amsterdam. Atlanta. Austin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. <sup>~</sup>Houston. Las Vegas. London. <sup>\*</sup>Long Island. Los Angeles. Mexico City. <sup>+</sup>Miami. Milan. <sup>»</sup>Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Francisco. Seoul. <sup>∞</sup>Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. <sup>^</sup>Tokyo. <sup>»</sup>Warsaw. <sup>-</sup>Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. <sup>~</sup>Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>\*</sup>Operates as a separate UK registered legal entity. <sup>+</sup>Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>»</sup>Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>∞</sup>Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. <sup>^</sup>Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. <sup>»</sup>Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <sup>~</sup>Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2022 Greenberg Traurig, LLP. All rights reserved.*