



May 14, 2015

## FINRA Enforcement Sanctions Increased

FINRA, through The National Adjudicatory Council (NAC), first published the [\*Sanction Guidelines\*](#) in 1993. The goal of the *Sanction Guidelines* was twofold. First, it was intended to familiarize FINRA firms with some of the typical securities industry rule violations that occur, and the range of disciplinary sanctions that may result from those rule violations. Moreover, it is used to assist FINRA's adjudicators in determining the appropriate sanctions in disciplinary proceedings. While the *Sanction Guidelines* do not provide predetermined or fixed sanctions for particular violations, it gives adjudicators a range of appropriate sanctions for a particular violation, and the option to consider aggravating and mitigating factors in order to arrive at an appropriate sanction for the particular circumstances. FINRA's NAC initiates periodic reviews of the *Sanction Guidelines* to ensure that the *Sanction Guidelines* reflect recent developments in the disciplinary process, FINRA's rules and accurately reflect the levels of sanctions imposed in FINRA disciplinary proceedings. As a result of the recent review, the NAC has made significant amendments to the monetary and non-monetary sanctions in the *Sanction Guidelines*.

The *Sanction Guidelines* General Principles have been amended to emphasize that FINRA's disciplinary system should be designed to protect the investing public, deter misconduct and uphold high standards of business conduct. The amendments underscore FINRA's policy of imposing progressively escalating sanctions on registered representatives and firms that engage in a pattern of similar misconduct or evidence a reckless disregard for regulatory requirements, investor protection or market integrity. Additionally, the *Sanction Guidelines* call for tougher sanctions against those who commit fraud or make unsuitable recommendations to customers.

### Revisions to *Sanction Guidelines* General Principles

With respect to the *Sanction Guideline* General Principles, as amended, General Principle No. 1 now incorporates the concept that sanctions in disciplinary cases should be significant enough to achieve deterrence, and not a mere cost of doing business. The revisions advise adjudicators to consider imposing sanctions in excess of the recommended range of sanctions when a respondent's misconduct has widespread impact, is intentional or results in significant ill-gotten gains. The modifications to General Principle No. 2 reinforce this policy of imposing meaningful sanctions and advise adjudicators to impose progressively escalating sanctions on individuals and firms with disciplinary history. General Principle No. 2, as amended, explains what constitutes "disciplinary history" for purposes of applying this principle in FINRA disciplinary cases and notes that pending, settled, and litigated arbitration proceedings, pending investigations, and ongoing regulatory proceedings prior to a final decision are not disciplinary history.

## **Revisions to the Sanction Guideline Related to Fraud & Misrepresentation**

The modifications to the sanction guideline for fraud, misrepresentations, or material omissions of fact are intended to reinforce the tenet that fraudulent conduct is unacceptable and warrants the imposition of strong sanctions. For intentional or reckless fraud by individuals, the amended guideline eliminates the guidance that individuals should merely be "considered" for a bar in egregious cases. The revised language states that adjudicators should "strongly consider" barring an individual unless mitigating factors predominate. In the alternative, should the adjudicators believe that a bar was excessive, the revised guideline also provides for the suspension of an individual for 31 calendar days to two years for negligent misrepresentations or material omissions of fact.

## **Revisions to the *Sanction Guidelines* Related to Unsuitable Recommendations**

The NAC increased the non-monetary range of sanctions for violations of FINRA's suitability rule, [FINRA Rule 2111](#), to ensure that the sanctions imposed for unsuitable recommendations to customers are meaningful and have significant deterrent effect. For unsuitable recommendations by individual respondents, the NAC revised the *Sanction Guidelines* to increase the high-end of the suspension from one year to two years. The amended sanction guideline for suitability violations also advises adjudicators to "strongly consider" barring an individual respondent where aggravating factors predominate the respondent's misconduct. When the unsuitable recommendations involve a firm, the revised sanction guideline advises adjudicators to consider suspending a firm with respect to a limited set of activities for up to 90 days, and in egregious cases, to "strongly consider" suspending a firm for any or all activities for longer than 90 days or ordering expulsion.

## **Indexing of Monetary Sanctions**

The final amendment to the *Sanction Guidelines* was the implementation of indexing of the high-end of the monetary sanctions for each sanction guideline to the Consumer Price Index. This initial set of indexed fine amounts will be rounded in increments of \$1,000 and will date back to June 1998. The low-end of the monetary sanctions ranges in the *Sanction Guidelines* will remain the same.

## **Final Take Away**

The amendments to the *Sanction Guidelines* are effective immediately and it is clear that between the increased monetary sanctions, the potential bar for fraud and increased suspension terms for unsuitable recommendations, FINRA now has more tools to deal with recidivists and fraudsters. With that said, and when viewed in light of the outcome of recent enforcement actions, it is clear that FINRA member firms and their associated persons need to be increasing mindful of their activities so as not to become another enforcement and sanction statistic.

For more information on the changes, see [FINRA Regulatory Notice 15-15](#).

We hope that this information has been helpful to you. Should you have any additional questions or concerns, please feel free to contact Daniel E. LeGaye or Michael Schaps by e-mail or phone, at 281-367-2454, or consult with your legal counsel or compliance consultant. This legal update

has been provided to you courtesy of The LeGaye Law Firm, P.C., 2002 Timberloch Drive, Suite 200, The Woodlands, Texas 77380. Visit our web site at [www.legayelaw.com](http://www.legayelaw.com).

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