

Official says to go up SRO's chain if you think 8210 demand goes too far

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If you think **FINRA** examiners are going too far with their document requests under the cover of Rule 8210, you should "escalate" your concerns up the regulator's chain of command, a FINRA official said at the organization's recent annual conference.

The comments were in regards to industry worry over February changes to FINRA Rule 8210. Under the change, FINRA clarified that it's authorized to demand documents that are in the "possession, custody or control" of your firm or one of its associated persons if the records pertain to your business and if the firm has the right to demand them if they're kept elsewhere (*BD Week*, February 2, 2013).

Some industry pros say the rule change could allow FINRA to reach far into firms' business- looking for "possible violations of just and equitable principles of trade" that could include looking into any potentially unethical business-related conduct.

But the FINRA official told conference attendees that an "overbroad" 8210 request hurts the regulator and hurts the firm.

"If we send an 8210 [and seek] all documents relating to your business, somebody's got to look through that. It's got to be loaded somewhere and our data systems are as finite as your data systems," he told conference attendees. "So I encourage [FINRA] staff to be focused in the 8210s."

He said that discussions about the reach of the amended rule have "always been in the abstract."

If you think examiners are going out-of-bounds with their document requests at your firm, make your concerns known by escalating it at FINRA, he said.

"People do not escalate. One hundred percent of the time that an issue's not escalated, we can't deal with it. They don't escalate. And I take from that, that a lot of the concerns are concerns in search of a problem because it's not actually happening out there," he said in reference to 8210 requests being overbroad. "But if it is [happening], you guys have got to help us and escalate those."

The official said he used to be a defense lawyer and he understands the effect on a business of an "all-documents-related-to" information request.

The official saw the rule change as "codifying what people already knew- the obligation was custody and control."

Brian Rubin, a partner in the Washington office of **Sutherland**, said in an interview with *BD Week* that if a firm believes examiners are going too far with their document request, the firm should "deal with the examiner or attorney in the first instance, and if that isn't successful, take it up the line and make your case to their supervisor."

Example: If the examiner requests all e-mails to and from a particular person for an extended period of time, you may be able to negotiate a more limited time period, or negotiate search terms so the universe is smaller, Rubin said.

He said that "even before the amendment [to rule 8210], they pushed the envelope and now they may have authority to do that. An example would be if they're examining outside business activities. To what extent can they get documents relating to the OBA that had nothing to do with the securities business, or personal information of the reps that had nothing to do with the securities business, and then, what are they going to do with that information once they obtain it?" he said.

Rubin said he's aware of such document requests happening before Rule 8210 was amended, and happening since then, as well.