

INSIGHTS

## Regulating Broker-Dealers at a (Social) Distance: FINRA Provides COVID-19 Business Continuity Planning Guidance and Regulatory Relief

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In just a short period of time, the COVID-19 pandemic has triggered a revolution in how we live our lives and do our jobs. These changes have extended to the regulation of the financial industry. While FINRA emphasizes that it remains fully operational at present, it has issued a series of communications providing updated guidance with respect to member firms' reporting obligations, and has even provided some measure of relief from certain regulatory provisions. We outline these temporary measures below.

### **Regulatory Notice 20-08**

FINRA Regulatory Notice 20-08, titled [\*\*Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief\*\*](#), provides timely guidance to its member firms and associated persons who are now faced with operational and personal disruptions resulting from the COVID-19 pandemic. While FINRA Regulatory Notice 20-08 does not create new rules or otherwise expand FINRA's current Business Continuity Rule (Rule 4370), it does offer certain regulatory relief and identifies certain areas of concern that firms may face as a result of COVID-19:

**Remote Offices or Telework Arrangements:** Member firms electing to offer the use of remote offices or telework arrangements must be sure to establish and maintain a supervisory system that is reasonably designed to supervise the activities of each associated person while working from an alternative or remote location.

**Cybersecurity:** FINRA has alerted member firms that there may be an increased risk of cybersecurity events during a pandemic due to more employees opting to work remotely and heightened anxiety and confusion caused by the virus. To guard against this increased risk, FINRA recommends: (1) ensuring that virtual private networks (VPN) and other remote access systems are properly patched with available security updates; (2) checking that system entitlements are current; (3) employing the use of multi-factor authentication for those employees that access systems remotely; and (4) reminding associated persons of the cyber risks through education that promotes heightened vigilance.

**Form U4/Form BR:** FINRA has temporarily suspended the requirement to maintain an updated Form U4 regarding office employment address for registered employees that relocate because of COVID-19. FINRA has also suspended the need for member firms to submit branch office

applications on Form BR for any newly opened temporary office locations or space-sharing arrangements established as a result of the pandemic. That said, FINRA would like member firms to use “best efforts” to provide written notification to its FINRA Risk Monitoring Analyst as soon as possible after establishing a new temporary office or space-sharing arrangement.

**Communicating With Customers:** FINRA advised that COVID-19 may result in increased customer call volumes and online account usage due to significant market movements and to therefore plan accordingly. Specifically, FINRA urges member firms to review their Business Continuity Plans regarding communicating with customers and ensuring that customers have access to funds and securities. If circumstances arise that prevent a registered representative from servicing his or her clients, the member firm should place a notice on its website notifying those customers who they may contact concerning the execution of trades, their accounts and access to funds or securities.

#### **Other Guidance**

**Form U4 Signatures:** FINRA is temporarily suspending the requirement under Rule 1010(c) that firms obtain the applicant’s handwritten signature on initial or transfer Form U4s. Firms may temporarily file such forms without a handwritten signature, so long as the applicant provides written acknowledgment (which may be electronic) that he or she has received and reviewed the final application and that the information is accurate and complete. Once practicable, a handwritten signature should be obtained.

**Rule 6490(c) Late Fees:** FINRA’s Market Operations Department is now waiving FINRA Rule 6490(c) late fees if, due to the COVID-19 pandemic, an issuer fails to provide proper notice of a Company-Related Action covered by Exchange Act Rule 10b-17, or of an Other Company-Related Action (e.g., changes to a symbol or name, company control transactions, and bankruptcies or liquidations). Issuers must provide documentation that the delayed notice was due to the COVID-19 outbreak, and are cautioned that their obligations under Exchange Act Rule 10b-17 remain unaltered. See [FINRA UPC #06-20](#).

**Membership Applications:** Pre-filing meetings and membership interviews for new and continuing membership applications will be conducted via video conference. Extensions will be granted if needed.

**Arbitration, Mediation and Disciplinary Hearings:** FINRA’s in-person arbitration and mediation hearings scheduled through May 1, 2020 are postponed and must be either conducted remotely or rescheduled. All other case deadlines apply. Similarly, all disciplinary hearings scheduled through April are postponed, aside from expedited hearings conducted remotely.

**CAT Reporting Requirements:** On March 16, 2020, the SEC temporarily delayed implementation of the new consolidated audit trail (“CAT”) order reporting requirements from April 2020 to May 20, 2020, subject to further relief if necessary. See [SEC No-Action Letter](#) (Mar. 16, 2020). Additionally, although not directly related to COVID-19, the SEC has exempted broker-dealers from reporting investors’ social security numbers, dates of birth and account numbers, instead requiring only the reporting of the account holder’s name, address and birth year to the central data repository. See [SEC Order Granting Conditional Exemptive Relief](#) (March 17, 2020).

#### **Conclusion**

FINRA has provided guidance and a certain degree of regulatory relief in response to the COVID-19 pandemic. It notes, however, the possibility of further relief in the future if it becomes necessary.

Bracewell attorneys are experienced with financial regulatory issues, and are ready and available to provide further information and discuss particular circumstances.