

BISA Legislative, Regulatory & Compliance Committee

FINRA Rule 4530— Are You Ready to Self-Report?

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July 13, 2011

BACKGROUND

- FINRA Rule 4530 Supersedes Prior Reporting Rules
- Effective Date July 1, 2011
- Purpose to Enhance FINRA Exam Program
- Covers External Events and Internal Conclusions

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AGENDA

- Summarize Key Provisions
- Focus on New Obligations
- Internal Conclusions Concept
- Suggest Some Best Practices

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OVERVIEW

- Member Has Filing Obligation
- Covers Member and Associated Person (AP) Events
- Report Promptly, but Not Later than 30 Calendar Days
- New Event Codes

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EXTERNAL - (a)(1)(A)

- Findings by Regulator, SRO, Business or Professional Organization of:
 - ◆ Violations of Securities, Insurance, Commodities, Financial, Investment-Related Laws, Rules, Regulations, Standards of Conduct
 - ◆ After Hearing or by Settlement

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EXTERNAL - (a)(1)(C)

- Same, Where Member or AP:
 - ◆ Named as Defendant or Respondent
 - ◆ Alleging Violations of Matters Listed in (a)(1)(A)
- Triggered by Complaint or Claim, Not Adjudication

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EXTERNAL - (a)(1)(B)

- Written Customer Complaints:
 - ◆ Alleging Theft or Misappropriation of Funds or Securities
 - ◆ Alleging Forgery

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EXTERNAL- (a)(1)(D)-(H)

- Member or AP Is Subject of Enumerated Negative Events, e.g.:
 - ◆ Denial or Limitation on Registration, Injunctions, Bars, etc.
 - ◆ Criminal Charges, Convictions re Felonies or Certain Misdemeanors
 - ◆ Awards and Settlements >\$15,000 (AP) and >\$25,000 (Firm)

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INTERNAL DISCIPLINE

- Where Member Disciplines AP by:
 - ◆ Withholding Compensation or Imposing Fine >\$2,500
 - ◆ Significantly Limits Activities on Temporary or Permanent Basis

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MISCELLANEOUS

- Members Still Must Amend Forms BD and U-4
- If Form U-5 Filing, No 4530 Report
- Must Supply Underlying Orders, Pleadings, Complaints, etc.
- Quarterly Customer Complaint Statistics Still to Be Reported

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INTERNAL CONCLUSIONS

- Where Member Concluded or Reasonably Should Have Concluded:
 - ◆ Firm or AP Violated any Laws, etc., Listed in 4530(a)(1)(A)
 - ◆ AP Must Self-Report to Member

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SUPP MATERIAL .01

- Self-Report of Internal Conclusions Limited to Conduct Such as:
 - ◆ Widespread or Potential Impact to Member, Customers or Markets
 - or*
 - ◆ Failure of Systems, Policies, Practices involving Numerous Customers, Multiple Errors or Significant Dollar Amounts
- Same for Associated Persons

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GUIDANCE

- Modeled on Old NYSE Rule
- Does Not Apply to Every Breach
- Good Faith Reasonable Determination
- Assessments by Internal Review Processes (e.g., Internal Audit) Not Determinative
- Senior Management Decision

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BEST PRACTICES

- Revise WSPs with New Guidelines
- Identify Decision Maker(s)
- Consider Committee Structure
- Document Process and Decisions
- Ensure Reports Filed
- Enhance Training and Education

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EXAMPLE

- FINRA Settlement with AXA Advisors, LLC in January 2010
- Failed to keep accurate records relating to its direct mutual fund business from 2000-2006
- Aware of issue in 2000 but did not inform FINRA until 2007
- \$250,000 fine

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