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Six Takeaways From FINRA's Revised Sanction Guidelines

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The Financial Industry Regulatory Authority (FINRA) Sanction Guidelines have been significantly revised, now giving FINRA discretion to impose considerably higher fines on mid- and large-size firms. The revisions, published on September 29, also deleted 20 prior infrequently used guidelines.

The Sanction Guidelines help FINRA adjudicators determine the appropriate penalty for FINRA rules violations. The guidelines are not absolute requirements; instead, they suggest a range of appropriate penalties before considering aggravating and mitigating circumstances. Firms and individuals may equally refer to the guidelines when settling disciplinary matters.

FINRA stated that its revisions "ensure that guidelines accurately reflect the level of sanctions imposed… in disciplinary proceedings." However, FINRA's FAQs emphasize that the sanctions imposed in both litigated and settled matters may fall above or below the recommended ranges.

The new guidelines are effective immediately and are published on FINRA's website along with Regulatory Notice 22-20. Firms should review the Sanction Guidelines and assess their impact on ongoing disciplinary matters.

Six Takeaways

1. Firms and individuals have separate fine ranges

- The Sanction Guidelines are now divided by subset between firms and individuals.
- The Sanction Guidelines increase the lower and upper limit of potential fine ranges for nearly all firms to a minimum of $5,000 with no upper limit, and in many instances, decrease the upper limit of fine ranges for individuals.

2. Mid- and large-size firms could see attempts to impose larger fines

- The Sanction Guidelines create separate fine ranges for small-, mid- and large-size firms. The definitions of small-, mid- and large-size firms were adopted from FINRA's by-laws:

- small-size broker-dealer: 1–150 registered persons;
- mid-size broker-dealer: 151–499 registered persons; and
- large-size broker-dealer: 500 or more registered persons.

- The Sanction Guidelines remove the upper limit of the highest recommended fine. Specifically, the previous version of the Sanction Guidelines set $310,000 as the highest recommended fine amount. The upper limit has been removed for the following violations:
  - Sales of Unregistered Securities (high volume of or recurring transactions in penny stocks);
  - 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;
  - Pricing — Excessive Markups/Markdowns and Excessive Commissions;
  - Research Analysts and Research Reports
  - Supervision — Systemic Supervisory Failures; and
  - Anti-Money Laundering (AML).

3. AML guidelines

- Reflecting its AML regulatory priority, FINRA not only removed the upper limit of the highest recommended fine for mid- and large-size firms that fail to report to monitor suspicious transactions, but also created six specific AML guidelines, three for individuals and three for firms:
  - Failure to Reasonably Monitor to Report Suspicious Transactions;
  - Deficient AML Compliance Program; and
  - Failure to Provide for Independent Testing, Designation of Responsible Individuals or Training.

4. $5,000 minimum

- The Sanction Guidelines establish a $5,000 fine as the minimum for all fines to firms.
- Small firms should not expect to see increases in applicable fine ranges except for:

- Fraud, Misrepresentations, or Omissions of Material Fact;
- Churning, Excessive Trading, or Switching;
- Failure to Respond or Failure to Respond Truthfully to Requests Made Pursuant to Rule 8210 (which authorizes FINRA to inspect a firm's books, records and accounts in connection with an investigation, compliant, examination and proceeding); and
- Selling Away (Private Securities Transactions).

5. Non-Monetary Penalties

- The revised Sanction Guidelines also created additional non-monetary sanctions to consider for individuals and firms that engage in repeated violations of FINRA rules or for serious misconduct. The sanctions include, amongst other non-monetary sanctions:
  - suspending or barring a respondent frim from engaging in a particular line of business;
  - requiring a firm to implement heightened scrutiny on individuals or departments in the firm; and
  - requiring independent consultants to design and implement procedures for improved compliance.

6. Also of Note

- The Sanction Guidelines also contain both general and principal considerations that firms and individuals, as well as FINRA's Department of Enforcement, may use to support reasoned arguments to adjust a potential sanction based on mitigating and aggravating circumstances.
- FINRA frequently conducts investigations and brings disciplinary actions for exchanges, known as self-regulatory organizations (SROs). These revised Sanction Guidelines are solely for FINRA's program and do not reflect sanction considerations for actions brought independently by an SRO or by FINRA on behalf of an SRO.

The full FINRA press release announcing the revised Sanction Guidelines is available here.

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