

FINRA Targets Broker-Dealer Conflicts of Interest

August 06, 2012

August 6, 2012 -- FINRA is asking selected broker-dealer firms about conflicts of interest to which they are subject and how they are managing those conflicts. FINRA is also requesting to meet with the firms' executive management for about three hours on this subject during the fourth quarter of this year. FINRA Chairman and CEO Rick Ketchum gave advance warning of this initiative on May 1, 2012 at the FINRA Annual Conference: You should be assessing whether your business practices place your firm's -- or your employees' -- interests ahead of your customers. What I can promise you is that, particularly with respect to the large integrated firms, *we will look to have a focused conversation with you* about the conflicts you have identified and the steps you have taken to eliminate, mitigate or disclose each of them. Now, prefatory to such conversations, FINRA is sending out a conflict of interest sweep letter (available [here](#)) requesting the recipient firms to provide:

- a summary of the most significant conflicts of interest that the firm is managing,
- the names of the departments and persons responsible for conducting conflicts reviews, as well as a summary of types of reports or other documents prepared at the end of such reviews, and
- the names of the departments and persons who receive any final reports or other documentation summarizing conflicts reviews.

The sweep letter emphasizes that FINRA has not determined that the recipient firms have committed any violations. Rather, FINRA's goal "is to better understand industry practices" in order to "develop future guidance for the industry and determine other steps FINRA could consider taking in this area." Accordingly, this effort appears to be primarily a fact finding initiative to help assure adequate regulation of circumstances in which broker-dealers or their associated persons may put their own interests ahead of their customers' interests. At the same time, any standards that FINRA ultimately develops for addressing such conflicts conceivably could influence the SEC's ongoing consideration, pursuant to the Dodd-Frank Act, of what standards of conduct should apply to broker-dealers, investment advisers, and their associated persons when providing personalized securities advice to retail customers. Also, to the extent that it takes a more active role in regulating conflicts

of interest in the broker-dealer context, FINRA may enhance its qualifications to regulate the analogous conflicts to which investment advisers are subject. Such additional experience could blunt arguments, made by some investment advisers, that FINRA's lack of familiarity with the types of fiduciary duties that apply to investment advisers weighs against either FINRA or any FINRA affiliate serving as a self regulatory organization for investment advisers.

Authored By



Thomas C. Lauerman



Ann Began Furman



Richard T. Choi

Related Practices

[FINRA Enforcement, Arbitration, and Appeals](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.