

FINRA Targets Broker-Dealer Conflicts of Interest

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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.

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