

[Securities Regulation Daily Wrap Up, BROKER-DEALERS—FINRA annual examinations report discusses Reg. BI, consolidated audit trail, and SPACs, \(Feb. 11, 2022\)](#)

Securities Regulation Daily Wrap Up

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By [John Filar Atwood](#)

The report also takes a look at problems FINRA found with some mobile apps' communications with customers and firms' supervision of activity on those apps.

FINRA published the 2022 report on its examinations and risk monitoring program in which it discusses its efforts on newer SEC rules such as Regulation Best Interest and Form CRS, as well as cybersecurity threats and the proliferation of securities trading through mobile apps. The report, which is intended to serve as a resource for firms on emerging and ongoing issues, also covers five areas not included in previous reports: firm short positions and fails-to-receive in municipal securities, trusted contact persons, funding portals and crowdfunding offerings, disclosure of routing information, and portfolio margin and intraday trading.

The [report](#) covers 21 topics in total and identifies the applicable rules for member firm compliance programs, summarizes noteworthy findings from recent examinations, and outlines effective practices that FINRA observed. This year's report [highlights](#) new material in sections that have appeared in previous versions of the report in addition to findings that are particularly relevant for firms in their first year of operation.

Reg. BI and Form CRS. The report states that during Reg. BI's and Form CRS' first full calendar year of implementation in 2021, FINRA conducted a more comprehensive review of firms' processes, practices, and conduct in areas such as establishing and enforcing adequate written supervisory procedures (WSPs), and filing, delivering and tracking accurate Forms CRS.

In its examinations, FINRA found that some firms' WSPs were not reasonably designed to achieve compliance with Reg. BI and Form CRS. Specifically, they did not identify the individuals responsible for supervising compliance with Reg. BI, and failed to detail how the firm planned to comply with the new rule requirements.

FINRA also identified instances where the firm failed to modify existing procedures to reflect Reg. BI's requirements by, among other things, not addressing how costs and reasonably available alternatives should be considered when making recommendations and not addressing conflicts that create an incentive for associated persons to place their interest ahead of those of their customers. Other deficiencies mentioned in the report include inadequate staff training, failure to comply with Reg. BI's care obligation and its conflict of interest obligation, and insufficient disclosures under Reg. BI.

With respect to Form CRS, FINRA found deficient filings that omitted material facts such as the limitations of a firm's investment services, or inaccurately represented the disciplinary histories of the firm's personnel. Some firms failed to describe types of compensation and compensation-related conflicts, or incorrectly stated that the firm does not provide recommendations, according to FINRA.

Consolidated audit trail. In its examinations of consolidated audit trail (CAT) reporting, FINRA found that some firms submitted to the Central Repository information that was inaccurate or incomplete. Some firms failed to resolve or repair CAT errors in a timely manner, FINRA said, while others did not establish and maintain WSPs or supervisory controls regarding both CAT reporting and clock synchronization that are performed by third-party vendors.

Mobile apps. FINRA acknowledged that mobile apps can serve to increase market participation, expand the types of products available to investors, and educate them on financial concepts. However, FINRA noted that the

apps raise novel questions and potential concerns, such as whether they encourage retail investors to engage in trading activities and strategies that may not be consistent with their investment goals or risk tolerance.

FINRA identified significant problems with some mobile apps' communications with customers and firms' supervision of activity on those apps, particularly controls around account openings. It also observed mobile apps making use of social media to acquire customers, so it recently initiated a targeted exam to assess firms' practices in this area. The exam is considering, among other things, firms' management of their obligations related to information collected from customers acquired through social media and other individuals who may provide data to firms. FINRA intends to make public the findings of the review after its completion.

SPACs. On the topic of special purpose acquisition companies (SPACs), FINRA said that it recognizes how SPACs can provide companies with access to diverse funding mechanisms and allow investors to access new investment opportunities. As SPAC activity increased, so too did FINRA's focus on broker-dealers' compliance with their regulatory obligations in executing SPAC transactions. In October 2021, FINRA launched a targeted exam to explore a range of issues, including how firms manage potential conflicts of interest in SPACs, whether firms are performing adequate due diligence on merger targets, and if firms are providing adequate disclosures to customers. FINRA said that it plans to share its findings from this review at a later date.

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