

FINRA proposes relaxed stance on payments to unregistered persons

FINRA has proposed easing its rule regarding transaction-related payments to unregistered persons, no longer assuming that the payments generally are allowed only for registered BDs.

The self-regulatory organization is proposing aligning its rule exactly with Section 15(a) of the Exchange Act in determining whether the receiving entity must be a broker-dealer.

This is expected to provide needed flexibility to broker-dealers that want to pay legitimate fees to entities that aren't broker-dealers but have been blocked by FINRA, says **Todd Cipperman**, an investment management attorney who heads **Cipperman & Company** law firm in King of Prussia, Pa.


"They've been very expansive in what they view as broker-dealer activities and who needs to register as a broker-dealer, and I think the significance of this is [FINRA is] saying, 'Look, we're not going to do that anymore. We're going to defer to the SEC, so it's one standard. If the SEC says one thing, we're not going to say something else. And it's up to the SEC to determine whether someone needs to register as a broker-dealer."

Because of the current FINRA rule, sometimes a payment made as part of a distribution that is intended for an IA needs to go through the affiliated

broker-dealer, which takes an override, Cipperman says.

But be cautious because the proposal would eliminate some exemptions that FINRA provides, such as one when a member joins with a bank to distribute certain securities, says **Susan Krawczyk**, a partner in the Washington office of **Sutherland**.

The self-regulatory organization said the current regulation is obsolete because it stems from a time when broker-dealers could engage in over-the-counter securities business and choose whether to be a member of a registered securities association.

The rule's original purpose was to urge non-members to become members by prohibiting members from providing certain kinds of payments to non-members, FINRA said in Regulatory Notice 09-69 .

The notice also makes a few other changes and clarifications:

- ✓ Members may not pay employees who have been suspended by FINRA for the length of time of that suspension. Such employees can't be used even in a clerical capacity if they've been fully suspended.
- ✓ If a suspension solely limits the person from engaging in certain activities, the firm can't pay the person for those activities, but can pay the person for performing allowed activities.
- ✓ For suspended persons, firms may pay money to an insurance or medical plan, or indemnity agreement relating to legal fees.

"Firms are often confused over what is allowable compensation for reps with sanctions. This spells out the how, when, who, and what is allowed," says **Amy Lynch**, president of **FrontLine Compliance, LLC**, a regulatory compliance consulting firm based in Leesburg, Va. and New York. ■



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