Proskauer

newsletter

Broker-Dealer Beat

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The Broker-Dealer Beat is a publication bringing you timely updates, developments and current industry trends.

FINRA Introduces Revised Sanction Guidelines

FINRA has published updated and revised Sanction Guidelines that, among other things, highlight the SRO's position that penalties in disciplinary actions should be significant enough to achieve deterrence and not serve merely as a cost of doing business. The Sanction Guidelines were last revised in 2011. These latest revisions come on the heels of criticism, including remarks by a member of the SEC, that FINRA's penalties too often have been financially insignificant for wrongdoers.

The purpose of the Sanction Guidelines is to assist adjudicators – hearing panels and the National Adjudicatory Council (NAC) – in determining appropriate penalties for violations of FINRA rules. The Guidelines also should inform the FINRA staff in crafting settlements with member firms. In order to promote consistency and uniformity, the Guidelines set out certain overarching principles to be considered in connection with the imposition of sanctions, including the size of the member firm, whether the alleged violation was intentional, whether repeat conduct was involved and whether there was loss to customers or undue benefit to the member.

Rather than impose a predetermined or fixed sanction for any given rule violation, the Sanction Guidelines set forth a range of penalties for particular violations that afford discretion to the adjudicator to take into account the facts and circumstances of the case. The Guidelines also specify aggravating and mitigating factors that can result in sanctions outside the recommended ranges. While the identified factors are not exhaustive, they are indicative of the issues FINRA considers particularly relevant in determining appropriate sanctions, such as a widespread impact on the investing public or ignoring red flags or warnings from regulators.

Recent penalties in settled matters have demonstrated a proclivity on FINRA's part to levy monetary sanctions that exceed the recommended ranges in the Sanction Guidelines in certain circumstances. This has been true despite an acknowledgement in the Guidelines that settled cases generally should result in lower sanctions than adjudicated matters to provide an incentive to settle. It is estimated that fines collected by FINRA in 2014 were more than double 2013 collections. In the current regulatory environment, members should expect the trend of increased penalties for regulatory infractions to continue.

Proskauer advises U.S. and global banks, broker-dealers, investment advisers, fund managers, exchanges, clearing agencies and other financial intermediaries on regulation and compliance with federal securities laws, state blue-sky laws, and the rules of FINRA and other self-regulatory organizations (SROs). We handle each matter with the goal of providing practical solutions to our clients' business imperatives.

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