

Corporate & Financial Weekly Digest

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FINRA Amends Sanction Guidelines

The Financial Industry Regulatory Authority has revised two sections of its Sanction Guidelines in response to recent FINRA disciplinary cases. In particular, the amendments:

1. specify a causation standard for restitution orders;
2. allow FINRA adjudicators to order damages be paid to those actually injured;
3. indicate that certain factors in determining sanctions may be more relevant than others in a given disciplinary matter; and
4. instruct FINRA adjudicators to consider other regulators' imposed sanctions in FINRA disciplinary matters.

The Sanction Guidelines provide guidance for crafting sanctions for potential violations of FINRA's rules. FINRA adjudicators and FINRA's Department of Market Regulation and Enforcement rely on these guidelines when determining sanctions and negotiating settlements in disciplinary matters. The Sanction Guidelines delineate General Principles Applicable to All Sanction Determinations (General Principles) and the Principal Considerations to be Used in Determining Sanctions (Principal Considerations).

Revisions to General Principles

FINRA Sanction Guidelines permit FINRA adjudicators to order restitution to remediate misconduct. Restitution seeks to restore the status quo by "disgorging" the unjust enrichment of the wrongdoer. General Principal 5 allows adjudicators to calculate orders of restitution based on the actual amount of loss sustained due to the misconduct, and thus, FINRA restitution orders may exceed the amount of the "ill-gotten gain." The Securities and Exchange Commission requested that FINRA specify the causation standard required under General Principle 5 when restitution is ordered. Revised General Principle 5 clarifies that "proximate causation" is the required standard.

General Principle 6 recognizes FINRA adjudicators' ability to impose fines in the amount of the financial benefit derived from the wrongdoer's misconduct. The amendment to General Principle 6 allows FINRA adjudicators to order some or all of the amount payable by the wrongdoer be paid to harmed customers, in addition to applying the amount toward fines payable to FINRA.

Revisions to Principal Considerations

FINRA revised its Principal Considerations generally to clarify that some of the enumerated factors used in determining sanctions will be more relevant than others in a given disciplinary matter. FINRA explains that not every enumerated factor will be aggravating or mitigating depending on the facts and circumstances of a case or the type of violation.

Principal Consideration 14 instructs FINRA adjudicators to consider sanctions imposed by other regulators arising from the same misconduct at issue. For example, FINRA adjudicators should consider sanctions imposed by state regulators in determining the appropriate sanctions in its own adjudications.

Click [here](#) to read FINRA Regulatory Notice 11-13.

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