FINRA CONSIDERING ELIMINATING SUB-VENDOR REQUIREMENTS IN PROPOSED RULE 3190

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At FINRA's recently held Annual Conference, Grace Vogel, FINRA Executive Vice President, was asked about the status of Proposed Rule 3190 regarding the regulation of third-party service providers, including, without limitation, heightened supervisory requirements for clearing and carrying firms. She responded that FINRA had received a wide array of detailed comment letters from interested parties, all of which are published on FINRA's website. The comment period ended May 13, 2011. (We provided a summary of the proposed rule in our April 2011 Outsourcing Alert.)

In an exclusive interview this week with Loeb & Loeb's Stephen Cohen, Ms. Vogel confirmed that FINRA has now completed its review of the comments and is currently preparing its response for submission to the SEC at which time the industry will again have an opportunity to comment on the proposed rule once it is published.

Ms. Vogel had just returned from her meeting with Marc Menchel, Executive Vice President and General Counsel for FINRA, and his staff on Monday to discuss the comment letters. She shared with Loeb & Loeb that, as a result of its review of the comments, FINRA is strongly considering an elimination of the requirements around sub-vendors. The revised rule will likely say that as a good business practice firms should require their vendors to notify them of subcontracting relationships but will not actually go so far as to require such notification.

We support FINRA's revised position on the elimination of sub-vendors from the rule and view this as a positive development for the industry, as any requirements regarding sub-vendor notification would have made industry compliance overly burdensome (as we discussed in our April Outsourcing Alert). Of lesser note, FINRA will be tightening some of the proposed language of the rule to clarify some issues. For example, it will clarify that activities with third-parties in the ordinary course of business, such as government securities clearing banks (i.e., Chase and Bank of New York Mellon), foreign clearing banks (i.e., Euroclear) and custodians, are not intended to be within the scope of this rule.
