

Points of Emphasis/Best Practice Summary

If your firm conducts business abroad it is important for your firm to understand the rules that govern your business in foreign locations. FINRA has rules that apply to U.S.-based firms conducting business in foreign locations, firms based in other countries that do business in the U.S., and to foreign representatives who wish to engage in securities business in the U.S. NASD Rule 1100 permits firms to register certain persons working in foreign offices as Foreign Associates without requiring qualification examinations. NASD Rules 1021(a) and 1031(a) authorizes firms to maintain registrations for persons who are engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary. NASD Rule 1060(b) allows firms and persons associated with a FINRA member to pay transaction-related compensation to non-registered foreign persons, or foreign finders. NASD Rule 1032

permits persons registered in certain foreign countries to work in the U.S. as general securities representatives after taking an abbreviated examination.

Although Foreign Associates are exempt from the examination requirements, they must still register with FINRA as a Foreign Associate of the broker-dealer. Foreign Associates are not permitted to act in a registered principal capacity. The firm's foreign offices should be held to the same compliance and supervisory standards as the firm's U.S. office locations, and must be inspected on the same inspection schedule as the registered U.S. branch offices.



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Broker-dealers and its associated persons must comply with all applicable U.S. and foreign laws when conducting securities business in a foreign location. Firms should carefully review all foreign laws in the jurisdictions where they may be conducting business to ensure compliance with these laws, as these laws may differ from FINRA rules and U.S. law.

Regulatory Corner

The SEC's new "pay to play" rule becomes effective on September 13, 2010. According to the SEC, pay to play is the practice of making campaign contributions and related payments to elected officials in order to influence the awarding of lucrative contracts for the management of public pension plan assets and similar government investment accounts. The rule will, among other things, prohibit investment advisers from providing advisory services for compensation, either directly or through a pooled investment vehicle, for two

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years, if the adviser or certain executives or employees make a political contribution to an elected official who is in a position to influence the selection of the adviser.

This rule applies to both candidates as well as political incumbents for a position that can influence the selection of an adviser. The rule also prohibits advisers from paying a third party, such as solicitors, to solicit a government client on its behalf, unless the third party is an SEC registered investment adviser or broker-

dealer that is subject to similar pay to play restrictions. In addition, advisers may not direct or fund political contributions through third parties such as spouses, lawyers or affiliated companies to circumvent the rule.

Under the rule's de minimus provision, advisers are permitted to make contributions of up to \$350 per election per candidate if the contributor is entitled to vote for the candidate. If the contributor is not entitled to vote for the candidate, up to \$150 per election per candidate may be contributed without triggering the pay to play rule prohibitions.

Word on the Street

Following the H1N1 Influenza outbreak of 2009, FINRA conducted a survey of certain firms to determine pandemic preparedness. Firms are required to create and maintain business continuity plans appropriate to the scale and scope of their businesses. All firms should conduct a risk analysis to determine vulnerability to various types of business disruptions, such as a pandemic, hurricane, earthquake, flood or cyber event. While most firms have already covered events such as earthquakes, regional power outages, or terrorist attacks, some firms may not have even thought about implementing a plan in the case of a pandemic, until last year's swine flu outbreak.

Certain practices that you may consider imple-

menting as part of your business continuity plan are to monitor warnings of a pandemic from the World Health Organization (WHO), Centers for Disease Control (CDC), and local health departments, and disseminate that information to employees; distribute hand sanitizers and other hygiene products in an effort to prevent the spread of infection; implement social distancing policies and capabilities; implement travel restrictions and quarantines based on CDC recommendations; minimization or elimination of group meetings. These examples are merely suggestions and your firm should evaluate its risk and set practices in place that work best for your firm. Capital Markets Compliance, LLC

can assist your firm in updating its business continuity plan to include pandemic preparedness.



Firms should be prepared for pandemics, such as the H1N1 pandemic of 2009.

All firms must review their business continuity plan on an annual basis and make any changes that may be necessary. Firms should also test their BCP to ensure its effectiveness, such as testing IT, remote access, and performing backup readiness drills. Testing the firm's BCP will identify any holes in the plan, providing the firm the opportunity to correct the problems prior to any significant business disruption taking place.