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FINRA Publishes its 2012 Annual Regulatory and Examination Priorities

The Financial Industry Regulatory Authority (“FINRA”) recently published its 2012 annual regulatory and examination priorities (the “2012 Examination Priorities”) to highlight new and continuing areas of significance to its regulatory programs, including topics of heightened importance to FINRA’s Enforcement Departments. The 2012 Examination Priorities represent risks that FINRA examines both broadly across the membership and in the course of targeted reviews. The 2012 Examination Priorities indicate that FINRA’s examination program is risk-based, in that the scope, content, frequency and nature of each examination will depend on the operational and risk characteristics associated with the respective firm, including the scope and scale of the firm’s operations, the products and services it sells, and the types

of clients or counterparties with which it does business. FINRA recommends that each member consider any issues discussed in the 2012 Examination Priorities that are applicable to the member, and assess whether the member’s internal controls, supervisory systems and risk management practices properly address the matters discussed.

Some of the 2012 Examination Priorities include:

- **Business Conduct and Sales Practice Concerns for Retail Customers.** The 2012 Examination Priorities reflect FINRA concerns regarding the full disclosure of material risks, mispricing and overcharging issues, and the suitability of products for consumers based on those underlying risks. FINRA has specifically identified yield chasing, liquidity, the consistency of investment cash flows with investor needs and transparency regarding cash flows and financial condition of potential investments as specific concerns. The 2012 Examination Priorities also indicate that suitability reviews will retain their importance in 2012, and call attention to the new Suitability Rule (FINRA Rule 2111) and Know Your Customer Rule (FINRA Rule 2090) that become effective on July 9, 2012.
- **Private Securities Transactions and Outside Business Activities.** FINRA examiners will focus on the private securities transactions of registered representatives and will review firm supervision of private securities transactions and determinations made pursuant to FINRA Rule 3270 regarding outside business activities.
- **Integrity of Supervision and Internal Controls.** The 2012 Examination Priorities remind each member firm of its obligation to maintain supervisory systems and underlying internal control procedures specifically tailored to its business model, the products and services it sells and the types of clients or counterparties with which it does business, especially for firms that offer higher risk products or services.

- **Information Technology and Cyber Security.** FINRA continues to be concerned about information technology and cyber security threats, and FINRA recommends that firms reassess their policies and procedures to ensure that they are adequate to protect customer assets from such risks.
- **Fees.** FINRA remains concerned about firms charging retail investors hidden, mislabeled or excessive fees. FINRA will continue to investigate firms that appear to be taking advantage of investors through fee schemes.
- **Branch Office Inspections.** FINRA believes that the branch inspection process is a critical component of a comprehensive risk-management program and can help protect investors and the interests of the firm, and FINRA examiners will review a firm's internal branch office inspection program and also conduct their own branch examinations of the firm's branch network.
- **Social Media and Electronic Communications.** Social media remains an important concern to FINRA. The 2012 Examination Priorities remind members that FINRA has consistently maintained that certain core regulatory requirements apply to all communications with the public, irrespective of the medium or device used to communicate.

The full text of the 2012 Examination Priorities can be found [here](#).