Bond Case Briefs

Municipal Finance Law Since 1971

FINRA 529 Plan Share Class Initiative Encourages Firms to Self-Report Violations.

On January 28, the Financial Industry Regulatory Authority (FINRA) issued a Regulatory Notice announcing the 529 Plan Share Class Initiative, a self-reporting initiative to promptly compensate harmed investors and promote firms' compliance with the rules governing the recommendation of 529 savings plans ("529 Plans") (the "Initiative").1 Under the Initiative, broker-dealers are encouraged to review their supervisory systems and procedures governing 529 plan share-class recommendations, self-report supervisory violations and provide FINRA with a plan to remediate harmed customers. In response, FINRA's Department of Enforcement will recommend that FINRA accept a settlement that includes restitution for the impact on affected customers and a censure, but no fine, consistent with one of FINRA's principal aims—investor protection.

With the publication of the Notice, FINRA also issued a video interview with Susan Schroeder, Enforcement Chief, titled "A Few Minutes With FINRA: 529 Plan Share Class Initiative."2 Together, the Notice and the interview introduce this new type of self-reporting program. To be eligible for the Initiative, firms must self-report by providing written notification to FINRA Enforcement by April 1 and submit required information by May 3.

Background and Discussion

529 Plans are tax-advantaged municipal securities designed to encourage saving for the future educational expenses of a designated beneficiary. As municipal securities, the sale of 529 Plans are governed by the rules of the Municipal Securities Rulemaking Board (MSRB), including MSRB Rule G-19 (Suitability of Recommendations and Transactions)3 and MSRB Rule G-27 (Supervision).4

As Schroeder explained in the interview, FINRA learned through its examination process that 529 Plans can be a "blind-spot" for some firms. Given the importance of 529 Plans to the investing public and the importance of expedited restitution, FINRA designed this Initiative to inform member firms of its concerns, and ask the firms to be proactive about assessing, correcting and reporting its processes.

529 Plans are commonly sold in different classes with varying fee structures. Class A shares typically impose a front-end sales charge but with lower annual fees comparative to other classes, whereas Class C shares typically impose no front-end sales charge but have higher annual fees than Class A shares. The recommendation of suitable share classes of 529 Plans were made more complex upon amendments made to the Internal Revenue Code (the "Code") in January 2018, that expanded the use of 529 Plans for tuition for grades K-12, subject to certain limitations. Instead of a "one-size fits all" approach to 529 Plan share classes, the changes to the Code underscore the importance of recommending a share class that is uniquely tailored and suited to the needs of the individual customer and beneficiary, in addition to the importance of supervising these recommendations.

The 529 Plan Share Class Initiative

Firms are encouraged to review their supervisory systems and procedures, including the failure to:

- provide training regarding the costs and benefits of different 529 Plan share classes;
- understand and assess the different costs of share classes for individual transactions;
- receive or review data reflecting 529 Plan share classes sold; and
- review share-class information, including potential breakpoint discounts or sales charge waivers, when reviewing the suitability of 529 Plan recommendations.

Further, firms are encouraged to assess and self-report the potential impact of such supervisory failures.

Eligibility for the Initiative

To qualify for the Initiative, firms must self-report by providing written notification to FINRA Enforcement on April 1 and provide additional, specified information by May 3.

The Notice explains that if a firm is deemed to meet the requirements of the Initiative, and FINRA Enforcement decides to recommend formal action based on the firm's compliance with the self-reporting obligations encouraged by the Initiative, *FINRA Enforcement will recommend that FINRA accept a settlement that includes restitution for the impact of affected customers and a censure, but no fine.* Schroeder explains in the interview that a settlement under this Initiative would be to supervisory violations and would not trigger a statutory disqualification.5

It is worth noting that FINRA intends to continue to examine and investigate firms' supervision of these issues. If a firm does not self-report under the Initiative and FINRA uncovers supervisory failures by that firm, any resulting disciplinary action and sanctions imposed in connection therewith are likely to exceed those contemplated by the Initiative. Further, FINRA *does not* offer the same initiative to *individuals* associated with member firms who sold 529 Plans to customers in violation of MSRB rules, or violated any state or federal securities laws. Individual liability will be assessed on a case-by-case analysis of the facts and circumstances.

Conclusion

The Initiative presents a unique and limited opportunity for firms to assess their supervisory systems and procedures governing 529 Plan share-class recommendations, to identify and remediate any defects, and to compensate any investors harmed by supervisory failures, while possibly avoiding fines for such conduct. As the deadline to take advantage of this program approaches, we recommend working with legal counsel to review and assess eligibility for the Initiative and for preparing the FINRA submission.

---

1 FINRA Regulatory Notice 19-04.

2 FINRA video: "Video: A Few Minutes With FINRA – 529 Plan Share Class Initiative."

3 MSRB Rule G-19.

4 MSRB Rule G-27.

5 Section 3(a)(39) of the Securities Exchange Act of 1934

————————————————————————

by Leonard Licht, Susan Light, and James Normile

February 7, 2019

Katten Muchin Rosenman LLP

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com