



# 2017 South Region Compliance Seminar

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## Writing and Maintaining WSPs

# Panelists

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## ■ Panelists

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# Core Requirements – WSPs

## ■ FINRA Rule 3110

- Requires establishment and maintenance of a system to supervise the activities of each associated person; and
- Written supervisory procedures to supervise the types of businesses in which the firm engages as well as activities of persons associated with the firm.
  - Systems and procedures must be “reasonably designed” to achieve compliance with applicable securities laws and regulations and with FINRA rules.

# Core Recordkeeping Requirements – WSPs

## ■ SEA Rule 17a-4(a)(7)

- The Firm must maintain WSP manuals, including updates, modifications, and revisions for three years following termination of use.

## ■ SEA Rule 17a-3(a)(22)

- “Each firm must maintain a record listing each principal... responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization... that require acceptance or approval of a record by a principal.”

# Core Maintenance Requirements – WSPs

## ■ FINRA Rule 3120 (Supervisory Controls)

- Broker dealers are required to test and verify that the firm's supervisory procedures are reasonably designed with respect to the activities of that firm and its associated persons, to achieve compliance with applicable securities laws and regulations and with applicable FINRA rules; and
- Firms must create new (or amend existing) procedures where the need is identified by the testing.
- An annual report detailing the system of controls and the summary of testing results must be submitted to the firm's senior management.



## ***Writing and Maintaining WSPs A Practical Guide***

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# Important Considerations for WSPs

Written Supervisory Procedures should be a living document that is embraced and enforced by a firm's management team. Effective WSPs can prevent scores of problems. Ineffectively drafted and/or poorly maintained procedures are a problem in and of themselves, and worse, can exacerbate other problems.

- **Procedures must be reasonably designed – not perfect.**
  - **FINRA Rule 3110:** *“Reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA Rules.”*
- **Reasonably designed, forward looking procedures which are adequately enforced and periodically updated will help to minimize compliance risks.**
- **Supervisory responsibilities must be reasonably delegated.**
- **Reasonable delegation includes ensuring proper qualifications and having clear delegation of responsibility.**
- **Annual supervisory controls testing is critical to maintenance.**

# Using FINRA Guidance in Drafting WSPs

- **NASD Notice to Members 99-45**
  - **Conceptual Aspects**
    - *“a supervisory system cannot guarantee firm-wide compliance with all laws and regulations”*
    - Industry standards require, *“that the system be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a member’s business”*
  - **Compliance Procedures v. Supervisory Procedures**
    - Compliance policies and procedures typically outline the requirements of the rules.
    - Supervisory procedures must spell out how the firm ensures effective compliance with the rule through various tools, methods, and controls.
  - **Supervisory System v. Written Supervisory Procedures**
    - The WSP manual is the written document that are part of an overall system of supervision.
    - The Supervisory System is an overall system of supervision that includes the WSPs, forms, reports, supervisors, committees, surveillance systems, and other supervisory tools.



# Using FINRA Guidance in Drafting WSPs

- [NASD Notice to Members 99-45](#)

- **Minimum Elements**

- Procedures must be tailored to the Firm's business
    - Designate principals for each area of business
    - Assign supervisors to each associated person
    - Designate Offices of Supervisory Jurisdiction
    - Ensure that designated supervisors are adequately qualified
    - Provide for annual compliance meeting
    - Provide for annual review of all businesses
    - Provide for internal inspections

# Using FINRA Guidance in Drafting WSPs

- [NASD Notice to Members 98-96](#)
  - Procedures should detail the following:
    - **Who:** The person(s) responsible for supervision (by name or title)
    - **What:** The supervisory steps and reviews to be taken by the appropriate supervisor (including tools used such as exception reports)
    - **When:** The frequency of the reviews
    - **How:** How the reviews are documented

# Use of Templates

**No Restriction on Use of Templates:** While there is no restriction on the use of templates for WSPs, FINRA requires procedures to be tailored to the firm's business.

## Pros

- Usually comprehensive as to rules
- Can be more cost effective than custom-designed WSPs
- Some offer subscriptions for updates
- Can be quickly implemented

## Cons

- FINRA won't look to WSP vendor if WSPs are inadequate – the firm is responsible
- Often include areas not applicable to the firm's business
- Can indicate to regulators that the firm has not devoted resources to developing procedures
- May require actions that the firm does not perform (not knowing all that is in the document)
- Little or no firm staff buy-in on details

# Helpful Tips

- Avoid simply restating rules
- Ensure that the procedures can be carried out
- Use clear, concise language
- Be descriptive, avoid vague references
- Include training following significant updates
- Utilize an exhibit for personnel assignments to simplify updates
- Use caution in assigning supervisory responsibilities to compliance staff

# Writing and Maintaining WSPs

## A Framework.

### Assessing / Vetting / Drafting / Implementing

Stage 1: Evaluate Current State - Existing Systems, Policies, Processes and Procedures

Stage 2: Conduct Gap Analysis - Existing Rules and Guidance vs. Current Processes and Procedures

Stage 3: Develop Revised WSPs and Gain Stakeholder Buy-In

Stage 4: Promulgate, Train and Conduct Ongoing Evaluation/Fine-Tuning

#### Stage 1

##### Current State

- Assess current supervisory system to determine extent of required changes
- Solicit feedback from stakeholders about what is working well and what is not
- Determine scope of review (areas to be included and excluded)
- Assess current WSPs vs. desired state of system

#### Stage 2

##### Gap Analysis

- Consider using FINRA checklist
- Incorporate information from constituents (including regulatory results)
- Compare existing processes, procedures, and forms to information gathered
- Develop outline
- Preserve old WSP version(s)

#### Stage 3

##### Assess, Commit and Draft

- Draft procedures using the methods outlined in NASD Notice 98-96 (Who, What, When, How) and 99-45
- Incorporate all aspects of system (tools, forms, etc.)
- Consider both rules and interpretive guidance
- Preview drafts with key stakeholders, modify based on feedback

#### Stage 4

##### Training and Implementation

- Distribute updated WSPs
- Revise forms & disclosures
- Conduct training
- Conduct follow-up testing and verification
- Make required changes (from follow-up)
- Conduct periodic re-assessments through 3120/3130 review and more frequent if required.

# Example

- **New FINRA Rule 2165 (Financial Exploitation of Seniors) effective February 5, 2018**
  - **Stage 1: Review requirements of Rule 2165 and [Notice 17-11](#)**
  - **Stage 2: Assess integration into firm supervisory systems**
    - What new tools, systems, records, and forms will be required? Updates to existing?
    - Which departments will be impacted?
    - Who will be responsible?
    - Discuss with key stakeholders in each functional area.
  - **Stage 3: Begin drafting WSPs based on information learned in Stage 2 above, with key elements including:**
    - Discuss defined terms (as per Rule 2165).
    - Outline the Rule's requirements.
    - Discuss firm's recordkeeping requirements, including method of inquiring about trusted contact, periodically confirming with client, notifications regarding temporary holds, and maintenance of records related to investigations (including responsible parties).
    - Discuss client/contact notification requirements – who is responsible, how notification is made, what records are maintained.
    - Outline key factors in identification of financial exploitation, persons responsible, and any systems or tools utilized, including review of customer complaints and communications.
    - Cover process for escalation of suspected financial exploitation and conducting investigation (including responsible parties and process to be followed).
    - Include process to ensure AMLCO considers any red flags of suspicious activity indicating financial exploitation.

# Example, Continued

- **New FINRA Rule 2165 (Financial Exploitation of Seniors) effective February 5, 2018**
  - **Stage 4: Solicit Feedback, Adjust, Implement, Test**
    - Seek feedback from key stakeholders on draft WSPs.
    - Assess feedback and if necessary, make adjustments.
    - Update firm training plan as appropriate to cover required training needs.
    - Implement Procedures: distribute, conduct training, update systems and forms as required.
    - Conduct periodic assessment as to effectiveness of procedures and make required adjustments.

# Helpful Tools

- **FINRA WSP Checklist**

<http://www.finra.org/sites/default/files/WSP-Checklist.xlsx>

- **FINRA Templates and Forms**

<http://www.finra.org/industry/tools>

*The information contained in this presentation is for illustrative purposes and should not be construed as individual advice to any one broker-dealer. Written procedures must be tailored to the facts and circumstances of each firm after a thorough review of that firm's overall supervisory system.*



# Avoiding Procedural Pitfalls

## ■ Keys to Solid Supervisory Systems and Procedures

- **Product specific**: Account for the specific features of products and not just general suitability concerns, e.g. product share classes; riders for VAs (what should your sales force be considering? / what should your Principals be keying in on to judge suitability?). Know the product and how to surveil before rolling it out.
- **Tested**: Adequate testing should be performed post-implementation. Updates should occur as needed. Procedures should not be static.

# Avoiding Procedural Pitfalls

## ■ Keys to Solid Supervisory Systems and Procedures

- **Over Disclosure:** A necessity – but too much reliance on disclosure forms can lead to problems. “Covering it” with a form may not get to the heart of it and can mask training needs, e.g. product knowledge; suitability considerations, etc. Implementation without proper training can lead to inconsistencies in form use.
- **Exception Reports:** Should be tailored (not “forced”) to meet a firm’s business needs. Testing should occur to ensure limited “false positives” or “misses”. Clearing firms have reports that may be valuable tools for an introducing firm. Firms should inquire.

# Examples of Procedural “Misses”

- **Discounting an Area:** An area of business considered insignificant was overlooked by the firm. The sales force increased dramatically. Critical procedures not implemented timely. Compliance issues soared.
- **Accountability / Inefficient Reports:** Key reviews were not completed for an extended period of time due to Compliance turnover. Exception reports never configured properly. Activity was not evaluated and red flags were not identified.

## Examples of Procedural “Misses”

- **No Resolution**: A firm had useful tools and identified patterns even though parameters were unclear. Unfortunately, there was no follow-through. Activity identified was removed from future analysis. The problem was never resolved and became re-occurring.