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## **OUTSOURCING AND OFF SHORING - NEW REGULATIONS**

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FINANCIAL SERVICES TECHNOLOGY LEADERS FORUM  
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# Panelists

## **Grace Vogel**

Executive Vice President  
FINRA

## **Jeffrey Stern**

Executive Director  
Morgan Stanley

## **John Ayanian**

Partner  
Morgan Lewis & Bockius LLP

## **Melissa MacGregor**

Managing Director & Associate General Counsel  
SIFMA

# FINRA Regulatory History

## NASD Notice to Members 05-48 – July 2005

- Accountability and Supervision
- Activities and Functions Requiring Registration Cannot “Be Deemed To Have Been Outsourced”
- A Member May Not “Contract Its Supervisory and Compliance Activities Away From Its Direct Control”
  - “Does not preclude a member from outsourcing certain activities that support the performance of its supervisory and compliance responsibilities”

# Proposed FINRA Rule 3190

## Background and Purpose

- Clarify obligations and supervisory responsibilities
- Codify FINRA outsourcing guidance
- Require additional obligations for clearing and carrying members

# Proposed FINRA Rule 3190

## General Requirements Applicable to **ALL** FINRA Members

1. Continued responsibility to comply with applicable securities laws and FINRA and MSRB rules
2. No delegation of responsibilities for, or control over, covered outsourced activities
3. Supervisory system and written procedures for covered activities
4. Registration and qualifications
5. Ongoing due diligence requirements

# Proposed FINRA Rule 3190

## For Clearing and Carrying Members...

1. Restrictions on outsourcing specified activities
2. Oversight requirements
3. Notifications to FINRA
4. Exceptions

# Proposed FINRA Rule 3190

## Restrictions for Clearing and Carrying Firms

A clearing or carrying member shall “vest” an associated person of the member with the “authority and responsibility” for:

1. The movement of customer or proprietary cash or securities;
2. The preparation of net capital or reserve formula computations; and
3. The adoption or execution of compliance or risk management systems.

# Proposed FINRA Rule 3190

Clearing and Carrying Firms must adopt procedures to:

- a) Enable the firm to take “prompt corrective action” to achieve compliance with applicable securities laws and FINRA and MSRB rules
- b) Approve transfer of third-party service provider duties to a sub-vendor

# Proposed FINRA Rule 3190

## Notification Requirements for Clearing and Carrying Members

1. Must notify FINRA of outsourcing agreements with third-party service providers and sub-vendors “to perform any function or activities related to the member's business as a regulated broker-dealer” within 30 days of entering into the agreement
2. Within three months of rule adoption, must notify FINRA of all such outsourcing arrangements in effect as of the rule effective date

# Proposed FINRA Rule 3190

## Notification must include:

- Functions being performed by the third-party service provider (and sub-vendors if known)
- Identity and location of the third-party service provider (and sub-vendors if known)
- The identity of the third-party service provider's regulator (if any)
- A description of any affiliation between the firm and the third-party service provider

# Proposed FINRA Rule 3190

## Exceptions:

- Ministerial activities performed on behalf of a member, unless otherwise restricted by the securities laws and FINRA and MSRB rules
- Activities performed pursuant to a carrying agreement approved under FINRA Rule 4311 (Carrying Agreements)

# FINRA Regulatory Notice 11-14

## Comment Letters Received

1. SIFMA
2. Ridge Clearing
3. Others

## Expected Timing

- Rule is likely to become effective sometime next year after filing with the SEC and another notice and comment period

# Questions