

# Guidance on MAP Considerations for Member Firms Engaging in Succession Planning or Exiting the Broker-Dealer Securities Business

2024

## Background

This Guidance assists member firms with continuing membership applications (CMAs) as part of the implementation of a succession plan or an exit from the broker-dealer securities business (which may or may not be connected to a succession plan).

FINRA reminds firms that [Regulatory Notice 22-23](#) (November 2022) (*Notice*) provides guidance on succession planning that includes, among other things, an overview of related FINRA rules and administrative processes. Although there are no regulatory requirements to develop or implement a succession plan, having a plan may benefit customers, member firms and registered representatives. A succession plan can assist in a more orderly transition of customer accounts.

Member firms can prepare for potential operational challenges and doing so may result in better retention of customer relationships. Registered representatives can plan for anticipated or unexpected life events, receive compensation for their books of business and, where possible, help prepare new registered representatives to support the transitioning customers.

Member firms exiting the broker-dealer securities business or taking other actions related to firm succession, such as selling their book of business or firm assets, may trigger a need for a CMA<sup>1</sup>. This Guidance provides an overview of the related FINRA rules and processes governing the Membership Application Program (MAP) including FINRA Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations), governing CMAs for changes in ownership, control, or business operations, and the process for seeking a materiality consultation<sup>2</sup> (MatCon), which a firm may voluntarily request or may be required to request under specified circumstances. This Guidance highlights some key information from that *Notice* relevant to MAP, and member firms are encouraged to review the *Notice* for detailed information about succession plans generally and their benefits.<sup>3</sup>

<sup>1</sup> As FINRA reminded firms in the *Notice*, a member firm is precluded from effecting changes in ownership, control or business operations, including business expansions, if there is a Covered Pending Arbitration Claim, as defined in FINRA Rule 1011(c)(2), unpaid arbitration award or unpaid settlement related to an arbitration without first seeking a MatCon. See Rule 1017(a)(6) and [Regulatory Notice 20-15](#) (May 2020).

<sup>2</sup> FINRA's MAP compliance resources, including [Mapping of Disclosure Categories for FINRA Rule 1017\(a\)\(7\)](#), helps firms determine whether they must file a CMA or engage in a MatCon pursuant to FINRA Rule 1017(a)(7).

<sup>3</sup> As noted in the *Notice*, the lack of succession planning can create challenges for customers, member firms and representatives. For example, FINRA has observed a number situations where the lack of a succession plan impacted member firms' operations,

### Succession Plan Helps Small Firm to Continue Operations

A small firm's chief compliance officer (CCO) and Financial and Operations Principal (FinOP) unexpectedly died during a weekend; the firm had a succession plan in place that, among other things, promptly notified FINRA of the situation and engaged a recruiting firm to hire a new CCO and FinOP. As a result of the firm's proactive planning for these events, the firm successfully continued operations without any interruptions in service to its customers.

## Succession Planning

While succession plan terms and complexity vary, plans typically address the sale of a book of business or firm assets or the reassignment of a registered representative's customer accounts. Given the nature of their business models, a succession plan for a small firm and a sole proprietorship may involve the sale of the firm. As described in greater detail in the *Notice*, member firms engaging in either internal<sup>4</sup> or external succession planning<sup>5</sup> should consider how their situation may implicate their current ownership and control, including management; potential transfer of assets, customer accounts moving to another firm; and operational contingency plans, such as reassignments of critical firm and regulatory reporting systems, and engagement with regulators.

### Recent MAP Organizational Enhancements and Member Firm Support

In April 2022, FINRA announced in [Information Notice 4/19/22](#) certain key operational changes in MAP to improve its effectiveness and efficiency, including establishing a centralized application intake function and aligning the program with the firm grouping model developed by FINRA's Member Supervision department.

As part of these changes, MAP created a new centralized resource for firms when completing their applications with a dedicated phoneline for MAP Intake: (212) 858-4000 (Option 5 – Membership Applications) or via email: [MAPIntake@finra.org](mailto:MAPIntake@finra.org).

Risk Monitoring Analysts (RMAs) remain firms' main point of contact for changes to firms' business operations, but firms completing a CMA are encouraged to contact MAP Intake with any questions.

### Engaging with RMAs

Member firms are encouraged to contact their RMA for MAP-related questions, or whenever a control person or owner departs the firm.

Firms are encouraged to share relevant succession planning information for control persons with their RMAs (e.g., that the sale of the firm's assets is related to the co-owner's retirement or illness) to help convey an understanding of the context and timing of the proposed changes.

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causing them to cease operations or impact their business, such as: founding members or owners unexpectedly dying and leaving remaining staff without sufficient expertise, registrations or access to critical regulatory and other systems to continue operations; CEO being barred from membership without sufficient appropriately registered persons to continue operations; representative having an unexpected medical event without a successor, leading the representatives' customers to leave the firm.

<sup>4</sup> The *Notice* lists several common internal succession planning programs, such as: teams (which allow remaining team member(s) to service customers if a representative retires or otherwise leaves the firm); sale of a representative's book of business to another representative at the same firm or at another firm under common ownership; hiring or developing a junior representative to take over a representative's book of business; representative designating another representative as successor and informing the firm and customers of the designation; owners or control persons of small firms and sole proprietorships agreeing with and designating another party to wind down the business upon specified events; contingency plans for specified events or a signed commitment between representatives for succession upon specified events, such as a representative's incapacity or death; member firm plans for reassigning customer accounts to new representatives when a representative retires or otherwise leaves the firm; and member firms ensuring departing representatives' customers are serviced by firm staff or other representatives while looking for potential buyers for the representative's book of business.

<sup>5</sup> The *Notice* notes that external succession planning programs may include a sale (an agreement to transfer or sell a representative's book of business to another firm or representative at another firm); or a merger or acquisition (an agreement for a firm to merge into, acquire or be acquired by another firm).

Below is an overview of the MAP Standards<sup>6</sup> one through 12, as they appear in Form CMA that must be used for all continuing membership applicants, including related rules and processes a member firm may consider as it develops a succession plan.

## CMA

In particular, member firms should consider whether succession plans that involve the sale of a firm could trigger the filing of a CMA in accordance with FINRA Rule [1017](#).<sup>7</sup> FINRA Rule 1017(a) specifies the events that require a CMA, including, among others, a merger with another member firm; an acquisition or transfer of 25% or more of the member firm's assets;<sup>8</sup> or a material change in business operations as defined in FINRA Rule 1011(m). If the filing of a CMA was prompted by the implementation of a succession plan, the firm should notify FINRA staff so that those details and situations can be taken into consideration.

For additional guidance or questions concerning succession plans and how they may potentially require a CMA, member firms should engage their RMAs and consider participating in a "pre-filing" meeting with MAP by contacting [membership@finra.org](mailto:membership@finra.org) or (212)858-4000 (Option 5 – Membership Applications).

## Communication About Succession Plans

Member firms should consider how succession plans—and particularly how reassignments of customer accounts—will be communicated to customers. The principle expressed in [Regulatory Notice 19-10](#) (April 2019) that customers should not experience an interruption in service due to a registered representative's departure is also applicable when a new registered representative will service a customer's account as part of a succession plan.

Member firms and registered representatives are also reminded to consider the requirements of FINRA Rule [2273](#) (Educational Communication Related to Recruitment Practices and Account Transfers), which requires delivery of a FINRA-created [educational communication](#) by member firms that highlights key considerations for customers contemplating transferring assets to a registered representative's new firm, and the direct and indirect impacts of a transfer on those assets.

Additionally, Regulation S-P (subject to limited exceptions) prohibits broker-dealers from disclosing nonpublic personal information about a customer to any non-affiliated third party without appropriate customer consent. As part of succession planning, member firms are encouraged to consider Regulation S-P, the use of customer nonpublic information, and review the firm's related procedures and privacy policy. See also [Regulatory Notice 16-18](#) (May 2016) and [Frequently Asked Questions Regarding FINRA Rule 2273](#).

<sup>6</sup> Please note that this guidance details considerations for Standards one through 12, which require firm documentation be provided to FINRA MAP for review. While FINRA Rule 1014 sets forth 14 standards for membership, the CMA does not elicit specific information from the applicant regarding standards 13 (FINRA does not possess information indicating that the applicant may circumvent the federal securities laws or FINRA rules) or 14 (the application is consistent with the federal securities laws and FINRA rules). See FINRA Rule 1014(a)(13) and (14).

<sup>7</sup> Firms are also reminded to promptly update [Form BD](#) by submitting amendments whenever the information on file becomes inaccurate or incomplete. This update would include any change in ownership.

<sup>8</sup> This type of CMA event has a unique timing consideration. A firm seeking to effect such change must file the CMA at least 30 days before making the change. Unlike the other events set forth under Rule 1017(a), a firm may effect the ownership change any time after 30 days has passed as long as the firm is not subject to an interim restriction that prohibits the transaction from closing before the MAP Group approves the CMA. See Rule 1017(c)(1); see also [Changes of Ownership or Control](#).

## MAP Compliance Tools and Resources for Member Firms

Firms applying for FINRA membership or member firms changing their existing lines of business – including changes as a result of a firms' succession planning – are encouraged to review [FINRA's MAP compliance tools](#) prior to completing a New Member Application (NMA) or CMA.

- [Mapping of Disclosure Categories for FINRA Rule 1017\(a\)\(7\)](#) is a tool that helps firms determine whether they must file a CMA or engage in a materiality consultation (MatCon) pursuant to FINRA Rule 1017(a)(7).
- [File Naming Conventions](#) guides applicants and member firms with naming documents submitted to MAP as part of the NMA or CMA process.
- Other resources include guidance on [NMAs](#); [mergers and acquisitions](#); [ownership changes and asset transfers](#); [expansion of representatives](#); [alternative trading systems](#); [online platforms and mobile applications](#); [digital asset applications](#); [FinTech applications](#); [funding portals](#); and [private placements](#).

**STANDARD 1: OVERVIEW OF THE APPLICANTS**

FINRA Rule 1014(a)(1): The application and all supporting documents are complete and accurate.

A member firm's succession plan may impact the firm's ownership, management, control and business operations.

FINRA Rule 1017(c) requires a CMA to be submitted at least 30 days before changes in ownership or control are scheduled to occur.<sup>9</sup>

Member firms should consider providing the following contractual agreements and arrangements as part of their CMA:

- Provide an overview of the proposed change, including:
  - A detailed business plan that describes the proposed change (also addressed in Standard 4, below), including:
    - The names of the new owners;
    - Specific ownership percentages for all new owner(s);
    - Source of funding for the purchase and recapitalization of the member; and
    - Entity in which the interests are owned.
  - The extent of impact, if any, the contemplated change may have on your firm (e.g., financial, operational, supervisory).
  - Charts that reflect the pre-transaction and post-transaction ownership structure with ownership percentages, as well as management and supervisory structure, if changing (Note: charts must total 100%).
- If possible, for each proposed change, provide:
  - Rationale and closing date;
  - Statement as to whether the transaction will include a transfer of assets and liabilities;
  - Whether there will be any new affiliated entities; and
  - Other regulatory approvals required.
- Where the change in ownership contemplates a business expansion or where there is a complete change in the management of your firm, provide an overview of the proposed business activities, including:
  - A detailed business plan that describes the proposed business activities, including:
    - Identifying each proposed business activity on the CMA;
    - A written narrative describing the scope of activities to be conducted;
    - A detailed description of how a typical transaction will be settled and cleared;
    - A statement describing how your firm and its associated persons will be compensated for the proposed activities;
    - The types of customers or investors (retail or institutional) and the approximate percentage of each type of customer; and
    - The anticipated number of associated persons and offices in the first year of operation.

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<sup>9</sup> Notwithstanding this timing consideration, where a member firm or an associated person has an unpaid arbitration award or unpaid settlement related to an arbitration at the time of filing a CMA, the member may not effect such change until demonstrating that it has the ability to satisfy such obligations in accordance with Rule 1014 and IM-1014-1, and obtaining approval of the CMA. See Rule 1017(c)(4).

- If the change in ownership is anticipated to have any impact on your firm’s governing documents, provide a draft copy of the amended documents.
  - For CMAs filed as a result of unexpected events, member firms may be requested to provide additional information regarding the anticipated ownership structure, such as:
    - Court document appointment of executors, Trustees and Power of Attorney, etc.
  - If the unexpected event is a death, member firms will be asked to provide the will, trust or other estate planning documents.
- If the change in ownership will have any impact on your firm’s board, provide the names of the new board member(s).
  - Provide the names and Central Registration Depository (CRD) numbers of any new individuals who will enter your firm’s supervisory structure as a result of the expected or unexpected life events.
  - Explain any changes to the roles and responsibilities of your firm’s existing principals (*i.e.*, whether they will have any new duties, roles or functions as a result of the expected or unexpected life events).

### **Asset Transfers and Mergers**

A member firm that will be filing a CMA seeking approval for an asset transfer or a merger, should provide:

- A statement as to whether each party to the transaction would be required to file a CMA because the contemplated change for each party pertains to any of the events listed in FINRA Rule 1017(a).
- A statement explaining whether your firm’s customers will be notified of the contemplated transaction. If so, the customer notification should accompany the application. If not, explain how customers will be notified of the transfer.
- A statement explaining whether your firm plans to file a Form BDW (Uniform Request for Broker-Dealer Withdrawal) either as part of this application or a future application. If so, confirm all information on Form BD is up-to-date and explain why Form BDW is being filed.
- A statement as to whether the transaction will include a transfer of assets and liabilities, including:
  - Whether the contemplated event may involve a transfer of liabilities:
    - Provide a description of any pending arbitration claims or closed or settlement arbitration matters (e.g., claim amounts, pending matters, current status, amount of settled matters, treatment of unpaid and pending arbitration claims on your firm’s financial statements, among others specified in the CMA).
    - FINRA reminds firms that the acquiring firm will need to be a FINRA member and demonstrate its ability to pay these liabilities.
  - Whether there are any pending or unpaid settled arbitrations or litigation actions against your firm or any of its associated person(s), such as: unpaid arbitration awards, other adjudicated customer awards, unpaid arbitration settlements, a pending private civil action, or a pending arbitration claim.
  - If liabilities are not transferring, provide a detailed description of each liability and provide a statement of how each will be satisfied.
- Confirm whether the proposed ownership change will result in your firm having any new affiliates under common control. If so, provide a brief description of the business operations of each new affiliate and advise whether your firm will engage in any business activities with its new affiliates.



**STANDARD 2: LICENSES AND REGISTRATIONS**

FINRA Rule 1014(a)(2): The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.

A member firm's succession plan may impact its licenses and those of the firm's registered representatives and associated persons, including key staff<sup>10</sup> such as the CEO, CCO, CFO and staff requiring certain registrations (e.g., FinOP). A member firm should consider providing the following as part of their CMA:

- Identify your firm's executives, officers, directors, and registered principals, including their direct or relevant experience and securities licenses, including licenses required to supervise your firm's business.
- Explain any changes to your firm's management and registered principals, including:
  - If your firm is adding new principals, address their direct or relevant experience and securities licenses, including licenses required to supervise your firm's business (also addressed in Standard 10, below).
  - If your firm is adding or changing an owner or control person, address whether the new owner or control person will have day-to-day responsibilities relating to your firm and address whether your firm will be pursuing principal registration for such owner or control person.<sup>11</sup>

**Two Principal Requirement**

Member firms, except for sole proprietorships, must have at least two registered principals and one FinOP. As part of succession planning, member firms are encouraged to consider and plan for events that may cause the firm to cease to meet the two principal requirement.

Firms may also request a waiver or exemption from the two principal requirement by completing the [Two Principal Waiver Request](#) with the MAP Group, in accordance with FINRA Rule [9610](#) (Application). If a waiver is granted, the sole principal at the firm must be qualified and designated as a FinOP.

**FINRA's Maintaining Qualifications Program (MQP)**

Registered representatives may engage in succession planning for life events but nevertheless want to leave open the possibility of a future return to the industry (e.g., registered representatives who are leaving the industry due to illness or transitioning to a role in another part of the financial industry).

FINRA's [Maintaining Qualifications Program \(MQP\)](#) provides eligible individuals who terminate any of their representative or principal registrations with the option of maintaining their FINRA qualifications for certain terminated registrations by completing annual continuing education. Individuals who elect the MQP option have a maximum of five years in which to reregister with a member firm without having to requalify with FINRA through an exam or obtain an exam waiver.

FINRA's [Financial Professional Gateway \(FinPro\)](#) provides individuals (current or former registered representatives) direct access to resources and tools to manage their securities registration information, including enrolling in the MQP.

<sup>10</sup> Where there will be a newly associated person as part of succession planning, FINRA reminds member firms of the obligation under FINRA Rule [3110\(e\)](#) (Responsibility of Member to Investigate Applicants for Registration) to establish and implement written procedures reasonably designed to verify the accuracy and completeness of the information contained in an applicant's initial or transfer Form U4 no later than 30 calendar days after the Form U4 is filed with FINRA.

<sup>11</sup> See [FINRA Qualification and Registration Requirements Frequently Asked Questions](#).

- Unless exempt from registration pursuant to FINRA Rule [1230](#), where necessary, provide an attestation for all non-registered owners, managing directors, and board members, attesting that they will not be involved in the day-to-day operations of the broker-dealer (including but not limited to hiring, firing, management, etc.) that would require registration under FINRA Rule [1210](#) (Registration Requirements).
- Provide the names and CRD numbers of any interim principal designated as part of a succession plan.
- Explain whether the person(s) designated as interim principal has the appropriate licenses and qualifications to act in their capacities.
- For any proposed supervisory principal who is not properly registered and qualified (e.g., Series 24), provide the anticipated date on which such exam will be completed. It is important to note that failure to complete the exams in a timely manner may result in the lapse or denial of the application.
- Provide a description of your firm’s hiring criteria, including how your firm ascertains a candidate’s experience, education, background checks, number of complaints and any other relevant materials. Address the following:
  - The hiring criteria thresholds that would preclude your firm from hiring a registered representative;
  - An explanation of whether or not your firm will hire any individuals who have disclosures or were previously employed at your firm with a problematic disciplinary history;
  - The specific tools employed to perform background checks, the name and CRD number of the person who performs such checks, and the process in place to

### **Professional Backgrounds of Member Firms and Individuals in the Succession Plan**

Researching the professional backgrounds of member firms and individuals who are parties to a succession plan is an important part of understanding potential issues and risks, including using the Pre-Registration feature in CRD, [BrokerCheck](#) and the [Investment Adviser Public Disclosure \(IAPD\) website](#). Member firms should consider:

- relevant histories (e.g., a registered representative with several customer complaints or a disciplinary history is seeking to team with a more junior registered representative); and
- whether any registered representative is or should be put under heightened supervision.

See, [Regulatory Notice 21-09](#) (March 2021) (FINRA Adopts Rules to Address Brokers With a Significant History of Misconduct); [Regulatory Notice 21-34](#) (September 2021) (FINRA Adopts Rules to Address Firms With a Significant History of Misconduct); [Regulatory Notice 18-15](#) (April 2018) (Guidance on Implementing Effective Heightened Supervisory Procedures for Associated Persons With a History of Misconduct).

### **Upon Sole Owner’s Passing, Family Member Obtains Required Licensing and Completes CMA**

A sole owner of a member firm passed away unexpectedly without a succession plan, so the ownership of the firm passed to the owner’s wife as part his estate. The owner’s wife did not maintain any broker-dealer licensing and qualifications and did not want to obtain them to manage the firm. She determined that their son would manage the member firm, but he also did not maintain any broker-dealer licensing or qualifications.

With guidance from MAP staff, the owner’s wife engaged a consulting firm to provide compliance services and the son obtained the appropriate principal license and qualifications. As a result, the member firm continued to operate with the owner’s family involved in its operations and the firm successfully completed its Form CMA amending its Membership Agreement.



- address any disclosures or information found in the course of the checks; and
- Exceptions to the stated hiring practices, and how such exceptions are implemented, including the specific steps of the review and exception process, and the manner in which such exception process is documented.

### 3

#### STANDARD 3: COMPLIANCE WITH SECURITIES LAWS, JUST AND EQUITABLE PRINCIPLES OF TRADE

FINRA Rule 1014(a)(3): The Applicant and its Associated Persons are capable of complying with applicable securities laws and regulations, and with applicable FINRA rules, including observing high standards of commercial honor and just and equitable principles of trade.

A firm's disciplinary history may impact a firm's ability to comply with relevant federal securities laws and regulations, as well as FINRA rules. Specifically, certain disciplinary and regulatory actions trigger the presumption to deny the application in accordance with FINRA Rules as noted below. A member firm should consider providing the following as part of the CMA:

- Provide an explanation of how your firm may overcome the presumption to deny the CMA notwithstanding the existence of the events set forth under FINRA Rule 1014(a)(3)(A), (C), (D), (F) and (G).<sup>12</sup>
- In particular, provide an explanation of how your firm can demonstrate compliance with this Standard in light of any pending or potential regulatory actions, including FINRA, U.S. Securities and Exchange Commission (SEC) or state disciplinary, regulatory and enforcement actions.
- If applicable, your firm should also be prepared to provide information related to:
  - Adjudicated and pending disciplinary and regulatory actions (including pending FINRA Enforcement actions);
  - Pending and unpaid arbitrations for your firm's associated persons; and
  - How will your firm pay for any pending and unpaid awards, and supporting documentation to demonstrate that funds are available to cover these costs (*i.e.*, arbitration plans or escrow agreements)<sup>13</sup>
- Identify any associated persons with a significant history of misconduct, and provide:
- details about any heightened supervisory plans for such persons; and

#### Succession Planning and Risks Relating to Bad Actors

In considering a potential sale, firms should be aware that bad actors may purchase a registered representative's book of business to obtain access to customers' accounts and information for fraudulent schemes. Bad actors may seek to take advantage of a registered representatives' interest in succession planning or their needs for the proceeds from the sale of their books of business. The selling registered representative's involvement can range from being unaware of the bad actor's intentions in purchasing the book of business to actively aiding the bad actor in the scheme.

<sup>12</sup> See [Regulatory Notice 20-15](#) (May 2020) (FINRA Amends Rules Governing its Membership Application Program to Incentivize Payment of Arbitration Awards) (describing, among other things, the rebuttable presumption to deny an application); see also [Notice to Members 04-10](#) (SEC Approves Amendments to Membership Application and Continuation Rules, Rules 1011, 1014, and 1017).

<sup>13</sup> See [IM-1014-1](#) (Evidence of Ability to Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements or, for New Member Applications, Pending Arbitration Claims); see also [Regulatory Notice 20-15](#) (May 2020) (FINRA Amends Rules Governing its Membership Application Program to Incentivize Payment of Arbitration Awards).

- whether any natural person seeking to become an owner, control person, principal or associated person of your firm have, in the prior five years, one or more “final criminal matters” or two or more “specified risk events” and a heightened supervisory plan.<sup>14</sup>
- Indicate whether your firm or any of its current or proposed associated persons is subject to any of the following events, and provide documentation of such events, unless the event has previously been reported to the CRD:
  - A regulatory action against or investigation of your firm or an associated person by FINRA, SEC or state disciplinary, regulatory and enforcement actions that are pending, adjudicated or settled;
  - An investment-related civil action for damages or an injunction against your firm or an associated person that is pending, adjudicated, or settled;
  - An investment-related customer complaint or arbitration that is required to be reported on the Form U4; or
  - A criminal action (other than a minor traffic violation) against your firm or an associated person that is pending, adjudicated or has resulted in a guilty or no-contest plea.
- Provide a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding your firm, associated person, or proposed associated person.
- Provide a copy of any document evidencing a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation, a self-regulatory organization rule, or an industry standard of conduct.
- Provide a description of any remedial action, such as special training, continuing education requirements or heightened supervision, imposed on a current or proposed associated person by a state or federal authority or self-regulatory organization.

## 4

### STANDARD 4: CONTRACTUAL AND BUSINESS RELATIONSHIPS

FINRA Rule 1014(a)(4): The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (A) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder, and FINRA rules.

A member firm's succession plan may impact contractual agreements and arrangements, which must comply with the federal securities laws, the rules and regulations thereunder, and FINRA rules. A member firm should consider providing the following as part of the CMA:

- Documentation related to the transaction and all business relationships of your firm, including:
  - Copies of all corporate resolutions, minutes and other equivalent documentation authorizing the change;<sup>6</sup>
  - Transactional documents governing the change, including all referenced exhibits and schedules (e.g., purchase agreement);
  - Copies of all formation and governing documents for the proposed structure;

<sup>14</sup> See [Regulatory Notice 21-09](#) (March 2021) (FINRA Adopts Rules to Address Brokers With a Significant History of Misconduct).

- Copies of any new service agreements or business contracts your firm will execute as a result of the proposed change (*i.e.*, expense sharing agreement and clearing agreements);
- All exhibits, schedules, disclosure schedules, addendums and relevant materials for the documents noted above; and
- Transactional documents governing the change, including all referenced exhibits and schedules (*e.g.*, purchase agreement).
- The applicant is also required to submit copies of all draft or final agreements for the proposed business, including those with banks, clearing entities, or service bureaus.
- An explanation as to whether your firm will enter into the following agreements, including any amendments as a result of the change:
  - Administrative services agreement;
  - Agreement with Financial and Operations Principal (FinOP);
  - Commission sharing agreement;
  - Technology services agreement, including arrangements with third-party providers of electronic storage media<sup>15</sup>;
  - Compliance services and support agreement; and
  - Expense Sharing Agreement that comports with [Notice to Members 03-63](#) (SEC Issues Guidance on the Recording of Expenses and Liabilities by Broker/Dealers).<sup>16</sup>
- An explanation as to whether the auditor, fidelity bond provider or financial institution of your firm will change. If so, provide copies of the amended agreements.
  - Also provide copies to any new and amended systems agreements (compliance tools, surveillance tools, accounting software, CRMs, etc.)
- If your firm anticipate transferring customer accounts via Negative Consent Letter (NCL), provide a copy of the NCL.

### **Transaction-based Compensation by Member Firms to Unregistered Persons**

As described in further detail in the *Notice*, FINRA Rule [2040](#) (Payments to Unregistered Persons) governs the payment of transaction-based compensation by member firms to retired registered representatives. Subject to conditions, under Rule 2040(b), member firms can pay continuing commissions derived from accounts held for continuing customers of the retired registered representative, during the time of retirement after the retired registered representative ceases to be associated with the firm.

### **Proactive Succession Planning and Form CMA Helps Member Firm Owner's Beneficiaries Continue to Receive Trailing Commissions**

A member firm's owner, who was also the CEO, CCO and FinOP of the firm, was no longer able to discharge his duties and responsibilities to the firm and its customers due health issues. The member firm filed a change in ownership, which included new management, that was vetted by MAP staff. Due to thorough preparation by the owner, as well as support from FINRA staff, the member firms' existing legacy accounts continued to be serviced by the firm and provided the owner's designated beneficiaries with significant compensation from legacy account fee trails, all of which were implemented consistently with applicable regulatory requirements, including FINRA Rule 2040.

<sup>15</sup> See Securities Exchange Act of 1934 (SEA) Rule 17a-4(f).

<sup>16</sup> See [Notice to Members 03-63](#) (SEC Issues Guidance on the Recording of Expenses and Liabilities by Broker/Dealers).

## 5

### STANDARD 5: FACILITIES

FINRA Rule 1014(a)(5): The Applicant has or has adequate plans to obtain facilities that are sufficient to: (A) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (B) comply with the federal securities laws, the rules and regulations thereunder, and FINRA rules.

A member firm's succession plan may impact facilities and locations. A member firm should consider providing the following as part of the CMA:

- An explanation as to whether the location of your firm will change or whether any new locations will be added.
- If any offices will be added, provide the following:
  - The number of new offices your firm expects to add;
  - The address of each office;
  - The lease or sublease agreement for each office; and
  - A statement as to whether your firm will rely on Safe Harbor provisions (IM-1011-1) to effect the expansion of offices.

## 6

### STANDARD 6: COMMUNICATIONS AND OPERATIONAL SYSTEMS

FINRA Rule 1014(a)(6): The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in FINRA Rule 1013(a)(1)(E)(xii).

A member firm's succession plan may impact communication and operational systems. A member firm should consider providing the following as part of the CMA:

- An updated business continuity plan (BCP), if applicable. The BCP should contain information on how your firm contacts its customers in the event of a system outage, and how customers can access their funds and securities in the event of a system outage.
- If your firm is adding a new communication platform, or is making material changes to the existing platform, your firm may be expected to present a demonstration of the functionality of the platform as part of the application review process so confirm it is ready at the time of filing.
  - During the membership interview, or during a separate meeting, your firm should expect to demonstrate:
    - Onboarding of customers;
    - Flow of a typical transaction from start to finish, including execution, clearance and settlement;
    - Trade reporting, if applicable; and
    - Risk management controls.
  - Provide an overview of your firm's surveillance and reporting functionality for the platform(s).

## Business Continuity Plan Requirements for Member Firms

While FINRA rules do not require that firms or registered representatives adopt succession plans, member firms are required to adopt business continuity plans (BCPs). FINRA Rule [4370](#) (Business Continuity Plans and Emergency Contact Information) requires member firms to create, maintain, review at least annually and update upon any material change, a written BCP identifying procedures relating to an emergency or significant business disruption. BCPs must be reasonably designed to enable a member firm to meet its existing obligations to customers and address existing relationships with other broker-dealers and counterparties.

Depending upon their role and responsibilities at the firm, an event involving a key person event (e.g., a registered person's illness, incapacity or death) could be an emergency or significant business disruption that triggers the firm's BCP. A key person event for a firm that is a sole proprietorship or has a small number of registered persons may more likely result in a BCP event. Member firms are encouraged to consider the potential impact of these events on their BCP.

Member firms are encouraged to review the [Small Firm Business Continuity Plan Template](#), an optional tool that helps small introducing firms in fulfilling their obligations under FINRA Rule 4370.

## 7

### STANDARD 7: MAINTAINING ADEQUATE NET CAPITAL

FINRA Rule 1014(a)(7): The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEA Rule 15c3-1 adequate to support the Applicant's intended business operations on a continuing basis, based on information filed under Rule 1013(b)(5). The Department may impose a reasonably determined higher net capital requirement for the initiation of operations after certain considerations.

A member firm's succession plan may impact minimum net capital and source of funds. A member firm should consider providing the following as part of the CMA:

- Identification of your firm's anticipated required minimum net capital (if applicable).
- A detailed description of the sources of the funds to be used for the purchase, as well as evidence of the source of funds (e.g., previous three months of bank statements).
- Evidence of financial wherewithal to sustain your firm for 12 months, where financial wherewithal is, at a minimum, calculated as fixed expenses minus reasonable projected revenue.
- Pro forma financial statements indicating 12-month projected revenue from your firm's business activity and any new expenses your firm expects (i.e., new vendor agreements to be signed or new equipment to be purchased).
- Evidence of financial wherewithal to fund new business activity (if requested as part of the ownership change) and meet net capital requirements (i.e., bank statements).
- If future capital contributions are needed, provide evidence of the financial wherewithal of the source of funding. For any individual that will provide funding, this should include the past three months of personal bank statements. For a corporate entity, financial wherewithal can be evidenced through audited financial statements or three months of bank statements.
- *Please note that responses and documentation (including bank statements) in a foreign language will not be accepted and must be certified and translated to English. Additionally, FINRA will not accept redacted documents.*



# 8

## STANDARD 8: FINANCIAL CONTROLS

FINRA Rule 1014(a)(8): The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and FINRA rules.

A member firm's succession plan may impact financial controls, in which case a member firm should consider providing the following as part of the CMA:

- If your firm's financial and operational principal (FinOP) will change as a result of the CMA, provide the following:
  - The FinOP's name and CRD number;
  - A detailed description of their prior work experience;
  - Whether the FinOP will be part-time or dually associated with other broker-dealers; and
  - A list of the FinOP's outside business activities, if applicable.
- Address any changes to your firm's current accounting system or Financial and Operational Principal (FinOP).
- Describe your firm's FinOP's experience and how it meets the needs of your firm's business, as well as the FinOP's allocated time to focus on your firm.
- Where applicable, provide an updated copy of your firm's financial control procedures and identify the section of the written supervisory procedures (WSPs) where such financial control procedures are contained.

# 9

## STANDARD 9: WRITTEN PROCEDURES

FINRA Rule 1014(a)(9): The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business.

A member firm's succession plan may impact WSPs. A member firm should consider providing the following as part of the CMA:

- If your firm is contemplating a change to business lines or supervision as part of the ownership change, provide all additions or changes to your firm's WSPs that address those changes.
- Confirm that all WSPs clearly state:
  - Who – Identify the principal or supervisor responsible for conducting the subject procedure;
  - What – Provide a description of the specific procedure that is to be conducted by the principal or supervisor;
  - When – State when or how often the specific procedure is to be conducted; and
  - How is it Evidenced – Address how your firm will evidence the fact that the procedure has been conducted.
- Provide your firm's WSPs, ensuring that the following topics are addressed:
  - your firm's hiring procedures, including the title of the person ultimately responsible for hiring decisions and terminations;
  - your firm's procedures for heightened supervision, including specific events that

### WSP Checklists for Member Firms

Member firms are encouraged to review WSP checklists, which can help firms evaluate their compliance program across all relevant regulatory obligations for [broker-dealers](#), [Capital Acquisition Brokers \(CABs\)](#) and [funding portals \(FPs\)](#).

- would trigger a registered representative being placed under heightened supervision and any restrictions that would be placed on the registered representative’s business activities;
- your firm’s procedures relating to monitoring communications of registered representatives; and
- Any section of the WSPs that will be changed as the result of the CMA.
- Where applicable, provide a complete copy of your firm’s anti-money laundering (AML) procedures and identify what section of the WSPs contain the AML procedures.

## 10

### **STANDARD 10: SUPERVISORY STRUCTURE**

FINRA Rule 1014(a)(10): The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and FINRA rules.

A member firm’s succession plan may impact supervisory structure. A member firm should consider providing the following as part of the CMA:

- Details of any changes to the supervisory structure, including:
  - A chart including names of supervisors and the corresponding reporting registered representatives;
  - Noting whether the supervisors are also conducting securities transactions and “producing” or non-producing;
  - Detailing the one year direct supervisory experience or two years related supervisory experience for the activity the supervisor intends to oversee per FINRA Rule 1014(a)(10)(D); and
  - Explaining any remedial action(s), such as heightened supervision.
- If any executive officer or supervisory principal are registered with any other broker-dealer firms, your firm must provide the name and firm CRD number of the other broker-dealers.
- If any executive officer or supervisory principal have any outside business activities, your firm must provide the name of any unregistered entities where the individual is employed; and
- Provide an estimate of how much time (weekly or monthly) the individual will devote to your firm and an explanation as to how such allotted time will ensure adequate supervision for your firm.

## 11

### **STANDARD 11: BOOKS AND RECORDS**

FINRA Rule 1014(a)(11): The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

A member firm’s succession plan may impact recordkeeping systems. A member firm should consider providing the following as part of the CMA:

- Describe any changes to your firm’s books and records, including the types of records maintained, service providers for recordkeeping, and complying with recordkeeping requirements.

- If the changes for your firm result in a foreign main office, provide a statement to confirm that it will remain in compliance with this Standard.

### **Books and Records Compliance Resources for Member Firms**

Member firms are encouraged to review the following resources:

- [Books and Records Requirements Checklist for Broker Dealers](#), which includes some of the books and records required by Rules 17a-3 and 17a-4 under the Securities and Exchange Act of 1934.
- [Exchange Act Rule 17a-4 Amendments Chart](#), which reflects the SEC's [amended](#) Rule 17a-4 that addresses maintenance and preservation of electronic records, the use of third-party recordkeeping services, and the prompt production of records.

## 12

### **STANDARD 12: CONTINUING EDUCATION**

FINRA Rule 1014(a)(12): The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and FINRA rules.

A member firm's internal succession planning program may impact Continuing Education planning. A member firm should consider providing the following as part of the CMA:

- A copy of your firm element and regulatory element of your firm's continuing education plan.
- Where changes are contemplated to your firm's supervisory controls, provide the name and CRD number of the new person responsible for the continuing education plan.

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**FINRA Compliance Tool Disclaimer** – This optional tool is provided to assist member firms in fulfilling their regulatory obligations. This tool is provided as a starting point, and you must tailor this tool to reflect the size and needs of your applicant. Using this tool does not guarantee compliance with or create any safe harbor with respect to FINRA rules, the federal securities laws or state laws, or other applicable federal or state regulatory requirements. This tool does not create any new legal or regulatory obligations for applicants or other entities.

**Updates** – This tool was last updated on September 3, 2024. This tool does not reflect any regulatory changes since that date. FINRA periodically reviews and updates these tools. FINRA reminds member firms to stay apprised of new or amended laws, rules and regulations, and update their WSPs and compliance programs on an ongoing basis.

**Additional Guidance** – Member firms seeking additional guidance on certain regulatory obligations should review the [Broker-Dealer Registration Topic Page](#) and other relevant FINRA [Key Topics Pages](#).

**Staff Contacts** – FINRA’s Office of General Counsel (OGC) staff provides broker-dealers, attorneys, registered representatives, investors and other interested parties with interpretative guidance relating to FINRA’s rules. Please see [Interpreting the Rules](#) for more information.

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