

Chasing “Extraordinary Cooperation” Credit in FINRA Investigations

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Seeking extraordinary cooperation should be one of the least controversial decisions a member makes when confronted with a rules violation, especially a violation that results in customer harm. However, seasoned legal and compliance professionals know that for every anecdote of a successful application for extraordinary cooperation, there are three or four similar stories of abject failures where members voluntarily disclosed violations, supplicated themselves to the regulatory investigative team, promptly remediated customers and fixed the violations, but saw no discernable discount in penalties or sanctions. These failures are often attributed to the movement of goalposts during the negotiation of a resolution. What the member considers extraordinary cooperation somehow falls short at resolution.

To that end, FINRA has issued additional guidance that will hopefully provide members a better sense of the requirements for cooperation credit and reaffirms the potential for avoiding fines altogether. While some will remain skeptical as to whether extraordinary cooperation will yield even an ordinary credit, we think chasing extraordinary cooperation credit still makes sense. FTI Consulting, as an independent consultant with significant experience in these matters, can assist with all phases of the process, from disclosure to scoping, correction and remediation. Our expertise, credibility, and crisp, thorough documentation of the above steps will assist in making the case for extraordinary cooperation.

FINRA’s Revised Guidance

On July 11, 2019, FINRA issued Regulatory Notice 19-23, a supplement to prior guidance on potentially qualifying actions for “extraordinary cooperation” credit during an investigation. In its revised guidance, FINRA offered several examples of recent matters in which credit was earned for extraordinary cooperation. In such situations where issues have been fully remediated, firms may receive a warning letter or escape enforcement action entirely. In cases where enforcement action is deemed to be appropriate, credit might take the form of a reduction in fines and/or sanctions.

How We Can Help

FTI Consulting’s Broker-Dealer Regulatory practice can provide the following services that may enable members to qualify for earned cooperation credit:

1. *Correcting deficient procedures and systems*

When deficiencies in procedures or systems cause a violation, FINRA’s guidance states that conducting an independent audit/investigation and hiring independent consultants to implement improvements are eligible opportunities to earn cooperation credit.

Our professionals in the Broker-Dealer Regulatory practice have decades of experience performing assessments of regulatory compliance at member firms in an expedient and thorough fashion. This commonly includes review of internal infrastructure, including back-end systems; books and records; and front-end reports. We can also assist with business analytics, organizational structure, processes, procedures, data transformation, data aggregation, manual touchpoints and internal controls. Following the assessments, we can also implement process updates and program enhancements.

2. *Providing restitution to impacted customers and investors*

A key focus of FINRA’s guidance is paying restitution as quickly as possible and ensuring that all harmed customers are remediated and made whole. FINRA’s guidance states that credit may be earned by using statistical methodologies and/or additional labor resources to accelerate the process of identifying customers for restitution.

FTI Consulting’s Data & Analytics professionals use advanced methodologies to quickly analyze voluminous and disparate datasets to accelerate the remediation process. Our professionals can provide data collection and analysis services with forensic tools and techniques to effectively extract relevant data, while also providing thorough documentation, chain of custody procedures, and verifiable backups of all harvested data. Working in conjunction with our subject matter professionals, this approach quickly identifies impacted parties and appropriately calculates the scale of remediation.

3. Self-reporting violations

FINRA’s guidance prioritizes proactive requests to meet with staff, sharing summaries of key facts and keeping FINRA updated as new developments occur. Detecting misconduct internally and prior to being notified by outside parties may also help earn cooperation credit in the event of an investigation.

Broker-dealers facing regulatory enforcement risks need trusted advisors that can integrate the benefits of self-reporting into the design of compliance policies; doing so can potentially deliver further possible cooperation credit and unlock the best possible outcome. We can assist with designing and implementing periodic pressure-testing compliance systems to be custom-tailored to specific reputational, legal and regulatory risks. Our professionals have the experience and credibility within the industry to support broker-dealers self-reporting issues and maximize cooperation credit with FINRA and other regulatory agencies.

4. Assistance with FINRA investigations

Conducting a thorough and independent audit or investigation – including legal counsel or consultants where appropriate – and fully disclosing results to FINRA can also result in cooperation credit. FINRA’s guidance suggests providing industry expertise to help explain complex products or practices.

We routinely work with internal and external counsel to fully develop the facts under investigation and better enable member firms with presentations to FINRA. This includes conducting routine fact finding and trading analysis; building chronologies; performing demonstrations and preparing executive summaries. As one of the world’s leading global investigations firms, we are trusted with working on complex multidisciplinary and multi-jurisdictional assignments that require critical attention. We offer the global investigative and

accounting expertise needed to evaluate and prioritize risk, identify weaknesses in internal controls, and design robust compliance and integrity monitoring programs.

Our Multidisciplinary Approach

FINRA extraordinary cooperation credit is based on the degree of assistance, given a firm’s size and resources. FTI Consulting can scale our offerings to best align with any compliance strategy, while providing flexibility to meet and exceed FINRA’s expectations. Whether taking a proactive or reactive posture, our industry-leading services include:

- Broker-Dealer Regulatory practice with former in-house legal practitioners and former regulators with decades of experience and insight dealing with regulatory reviews
- Global investigations teams that are independent of any audit relationships
- Forensic accounting experts focused on financial services clients and products
- Data & Analytics professionals who use advanced methodologies to quickly analyze voluminous datasets to accelerate the remediation process

To learn more about how FTI Consulting can help identify opportunities for extraordinary cooperation credit from FINRA, please reach out to one of our professionals.

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CONTACTS



Christopher Chatfield
Senior Managing Director
Co-Leader, Broker-Dealer Regulatory
christopher.chatfield@fticonsulting.com
+1 646 453 1268



Anthony Italiano
Senior Managing Director
Co-Leader, Broker-Dealer Regulatory
anthony.italiano@fticonsulting.com
+1 212 651 7150



Joe Lakier
Senior Director
Broker-Dealer Regulatory
joe.lakier@fticonsulting.com
+1 212 651 7117



Ozgur Vural
Managing Director
Data & Analytics
ozgur.vural@fticonsulting.com
+1 646 453 1235



Tyler Paretchan
Senior Consultant
Broker-Dealer Regulatory
tyler.paretchan@fticonsulting.com
+1 212 651 7137



Matt Stieve
Senior Director
Data & Analytics
matt.stieve@fticonsulting.com
+1 646 485 0510

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