



Risk Management Update December 2010

NEW ELECTRONIC SAFEGUARDING MEASURES FROM FINRA

Confidentiality. Privacy. Safeguarding concerns. These are key areas of focus in examinations and enforcement actions by both FINRA and the SEC. As our technologies continue to advance and reliance thereupon grows ever stronger, security controls for protecting confidential nonpublic personal information is paramount.

In response, FINRA proposed amendments to FINRA 8210 to require member firms to provide responsive information to regulatory requests vis-à-vis a portable media device through encryption, as further described below. FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) authorizes FINRA to compel a member, person associated with a member, or other person over whom FINRA has jurisdiction, to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination or adjudicatory proceeding.

Commencing December 29, 2010, firms will be required to take extra steps to safeguard and encrypt that information provided in response to a Rule 8210 request in order to protect customer's personal information from unauthorized or improper use.

Steps to Encryption

As defined in the amended Rule 8210, *encryption* is the transformation of data into a form in which meaning cannot be assigned without the use of a confidential process or key. Consequently, the recipient of the information should not be able to access or read the data unless permission is granted by the information sender.

In order to comply with the encryption standards under Rule 8210, a member firm or person providing portable information to FINRA is required to do the following:

1. Encrypt portable media using an "industry" strength level of encryption; and
2. Provide the confidential process or key regarding the encryption to FINRA staff in a communication separate from the encrypted information itself.

Under the first prong of the amended rule, compliance requires "industry standards for strong encryption." In accordance therewith, FINRA defines this standard to be encryption of 256-bits or higher. Typically, encryption settings are found embedded within standard Window-desktop applications and may be applied to the media using the following steps:

- Open a Word document
- Go to the Tools Menu
- Select Options
- Select the Security Tab
- Click the Advanced button next to the File Encryption / Password to Open form field
- Select RC4, Microsoft Strong Cryptographic Provider

- Choose your Key Length (look for 256 bit)
- Check the "Encrypt document properties" check box
- Click "OK"

In the alternative, there are a variety of vendors who may be able to supply encryption applications for a minimal fee. Importantly, the encryption requirements extend towards “portable media devices,” which are defined as storage devices for electronic information, including but not limited to a flash drive, CD-ROM, DVD, portable hard drive, laptop computer, disc, diskette.

The second part of the Rule requires firms to take an additional step when supplying electronic information to FINRA. After taking measures to secure the sufficient standard of encryption, an additional email or form of documentation must be provided to FINRA with the key or process detailing how the information can be accessed.

Compliance Steps and Considerations for Firms

In light of the new requirements under Rule 8210, member firms receiving requests for information from FINRA should take the following safeguarding measures:

1. Inquire with IT or other personnel regarding firm available encryption applications;
2. Prior to responding to requests by FINRA through portable media devices, ensure the required industry standard of encryption is installed; and
3. Remember to include strong password or processes instructions to FINRA for granting access to the encrypted information.

In Summary

Rule 8210 as amended should be easy to comply with once firm-wide encrypting applications are established. Importantly, these safeguarding tactics will help protect private information about your firm’s business, which may be vital for maintaining client and customer confidence in the firm. For more information about this rule and other FINRA developments, please do not hesitate to contact Core Compliance & Legal Services, Inc. at (619) 278-0020.

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