



2019 District Compliance Seminar

With the State of Pennsylvania • October 16 | Harrisburg, PA

Common Examination Findings and Effective Practices **Wednesday, October 16, 2019** **1:05 p.m. – 2:00 p.m.**

Join panelists as they discuss the most common deficiencies noted during cycle examinations. Industry practitioners discuss effective practices for preparing for examinations, taking corrective action, and updating compliance procedures and practices based on examination results.

Moderator: Kayte Toczyłowski
Associate District Director, Sales Practice
FINRA Philadelphia District Office

Speakers: Stephen Marchese
Examination Manager, Sales Practice
FINRA Philadelphia District Office

Amber Nicklow
Chief, Central Region, Bureau of Securities Compliance and Examinations
Pennsylvania Department of Banking and Securities

Victor Sosa
Examination Manager, Sales Practice
FINRA Philadelphia District Office

Common Examination Findings and Effective Practices Panelist Bios:

Moderator:

Kayte Toczylowski is Associate District Director of the Philadelphia District Office of FINRA (Financial Industry Regulatory Authority). She entered the securities industry in 2003 in the compliance department of Janney, a regional broker-dealer headquartered in Philadelphia. The majority of her eight-year career at Janney was spent as a compliance examiner for the firm's branch network. In 2011, she joined FINRA as a Sales Practice Examiner, was promoted to Manager in 2015, and assumed her current position in June 2018. As Associate District Director, she is responsible for the implementation of the District Office's Firm Examination program. Ms. Toczylowski received a BA in English from Villanova.

Speakers:

Stephen Marchese has been with FINRA for nineteen years. Prior to joining FINRA (formerly NASD), Mr. Marchese spent four-and-a-half years working for a New York State Senator where some of his responsibilities included acting as both a business and military liaison. Since joining FINRA, Mr. Marchese has worked in four different District Offices. He began his career in the NYC District where he gained valuable experience working with market making firms. Soon after, he transferred to the Long Island Satellite Office and the Boca Raton, FL office (between 2001 to 2006) where he was active in a number of examinations and investigations involving "boiler room" type firm's that focused on high-pressure sales tactics and "churning" trading strategies. In 2007, Mr. Marchese transferred to the Philadelphia District. During his time at FINRA, Mr. Marchese has been assigned to various different internal areas including acting as a cycle examiner, a cause examiner and in 2014 was named to the Northeast Regional Exam Team, which was a group of Examiners who were responsible for examining the riskiest firms in the Northeast region. Currently, Mr. Marchese is an Examination Manager, a position he has held since 2016. Some of the more notable examinations or investigations Mr. Marchese has worked on include the following: A Firm phone taping rule case in which the Firm did not tape all required conversations; A mutual fund market timing case in which the Firm being examined was a willing participant; Fraudulent activities related to a private placement, which included material omissions; Unauthorized trading activities of a registered representative who was under significant financial strain; Identified the intentional alterations to the books and records of a firm to indicate supervision had occurred on VA transactions; and, An email case in which a registered representative purposely deleted firm related email from his personal email address which he had been using for business without approval. Mr. Marchese has also participated in a number of Special Projects, including the Regulation 60 Sweep, AML Quality Reviews and High Risk Registered Representative Quantitative Assessments to name a few. He is currently a designated regulatory specialist in the area of private placements – crowdfunding and a regional expert in Branch Examinations. Mr. Marchese graduated from Molloy College (Rockville Centre, NY) with a BA in Political Science and Business Administration, and he received his MBA from Dowling College (Oakdale, NY).

Amber Nicklow is Chief of the Central Region, of the Bureau of Securities Compliance and Examinations, for the Pennsylvania Department of Banking and Securities. In this role, she supervises the Bureau's central region, in its compliance examinations of Pennsylvania registered investment advisers and broker-dealers; and investigations concerning technical violations of the Pennsylvania Securities Act, fraud, and white-collar crime related thereto. Ms. Nicklow holds a BS in Business Management, a MS in Accounting, and a MS in the Administration of Justice. Ms. Nicklow is a member of the NASAA Board Level Member Services Committee and the International Association of Financial Crimes Investigators. Ms. Nicklow holds designations of Certified Fraud Examiner and Certified Anti-Money Laundering Specialist.

Victor Sosa is Examination Manager in FINRA's Philadelphia District Office. Mr. Sosa manages Cause examination staff that are responsible for the execution of the investigation of customer complaints, regulatory tips, member firm terminations of associated persons' employment for regulatory cause, and activities of associated persons to determine compliance with federal and FINRA rules and regulations. Prior to becoming an Examination Manager, he worked as an Examiner conducting Cycle and Cause investigations, and processed applications for FINRA membership. Prior to joining FINRA, Mr. Sosa

worked for the City of Philadelphia as an Attorney in the Tax Division. Mr. Sosa obtained his JD from Temple University Beasley School of Law and his MBA from Saint Joseph's University.



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Panelists

■ Moderator

- **Kayte Toczykowski, Associate District Director, Sales Practice, FINRA Philadelphia District Office**

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- **Stephen Marchese, Examination Manager, Sales Practice, FINRA Philadelphia District Office**
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- **Victor Sosa, Examination Manager, Sales Practice, FINRA Philadelphia District Office**

Registered Representative Use of Discretion

- **FINRA Rule 3260 (Discretionary Accounts) and 2010 (Standards of Commercial Honor and Principles of Trade)**
- **Typically used as an accommodation for the customer or is received verbally in the recent past**
- **Training**

Failure to Disclose (liens/judgements, bankruptcies, OBA/PST...)

- **By Laws of the Corporation / Article V, FINRA Rule 3110 (Supervision), FINRA Rule 3270 (Outside Business Activities of Registered Persons) / 3280 (Private Securities Transactions of an Associated Person)**
- **Lack of Training/Understanding and sometimes willful in order to hide misbehavior**
- **Training and Attestations**

OBAAs and PSTs (...continued!)

■ What is being done once an OBA/PST is disclosed?

- 3270.01 supplementary material
- Evidence of review

■ What is being done once an OBA/PST is disclosed?

- Has it materially changed? (turned from OBA to PST?)
- PST needs ongoing supervision

■ Training, Attestations, Surveillance

- Email Reviews, Internet Searches

Resources

- **2018 Report on FINRA Examination Findings**
 - (www.finra.org/rules-guidance/guidance/reports/2018-report-exam-findings)
- **FINRA Regulatory Notices**
- **Disciplinary and Other FINRA Actions (finra.org)**
- **FINRA Regulatory Coordinators**

Key Takeaways

■ TRAINING

- Attestations, Annual Compliance Meeting, Branch Inspections

■ ASK QUESTIONS

- If it doesn't make sense – ASK

■ EVIDENCE REVIEW

- Didn't document, didn't happen