Back To Basics Compliance (B2BC) – Social Media and Public Communications
Wednesday, May 27
4:45 p.m. – 5:45 p.m.

Topics:

- Explain the role of the FINRA Advertising Regulation Department.
- Understand the definitions, approval, review, recordkeeping, and filing requirements in FINRA Rule 2210 (Communications With the Public).
- Apply the content standards of FINRA Rule 2210.
- Understand the FINRA regulatory notices that provide guidance on social media and mobile communications and apply their core compliance concepts.
- Apply the various communications rules to sample advertisements.

Speakers:

Amy Sochard (moderator)
Senior Director
FINRA Advertising Regulation

Pramit Das
Assistant Director
FINRA Advertising Regulation

Gregory Riviello
Director
FINRA Advertising Regulation
Back to Basics Compliance Program – Social Media and Public Communications

FINRA Annual Conference
May 27, 2015 • Washington, DC
Panelists

Moderator:
- Amy Sochard, Senior Director, FINRA Advertising Regulation

Panelists:
- Pramit Das, Assistant Director, FINRA Advertising Regulation
- Gregory Riviello, Director, FINRA Advertising Regulation
FINRA Advertising Regulation Department

- Filings review
- Investigations
- Sweeps
- Member outreach and education

Contact Information:
- Website: [www.finra.org/Advertising](http://www.finra.org/Advertising)
- Telephone Number: 240-386-4500
FINRA Rule 2210: Definitions

Retail Communication
- Any written or electronic communication distributed to more than 25 retail investors within any 30-calendar-day period

Correspondence
- Any written or electronic communication distributed or made available to 25 or fewer retail investors within any 30-calendar-day period

Institutional Communication
- Any written or electronic communication distributed or made available only to institutional investors
- Does not include a member's internal communications
FINRA Rule 2210: Supervision of Institutional Communications and Correspondence

Institutional communications

- Flexible supervision:
  - Risk-based procedures
  - Training
  - Surveillance
  - Follow-up to correct problems

- Internal use only communications used within a single broker dealer are not subject to FINRA Rule 2210; however, each firm must adopt procedures to supervise this area of its business.

Correspondence

- Flexible supervision under FINRA’s supervision rules
FINRA Rule 2210: Internal Approval of Retail Communications

- An appropriately qualified, registered principal must approve each retail communication prior to use or filing with FINRA.

- Exceptions from principal approval include:
  - Retail communications, supervised in the same manner as correspondence, that:
    - Do not make any financial or investment recommendation or promote a product or service;
    - Are posted to an online interactive electronic forum (social media);
    - Are excepted from the definition of “research report” (e.g., market letters);
    - and
  - Retail communications, filed by another firm, and found by FINRA to be consistent with standards.
FINRA Rule 2210: Recordkeeping

- Retain all communications for 3 years as required by the Securities Exchange Act of 1934 (SEA) Rule 17a-4(b).

- Records for retail and institutional communications must include:
  - A copy of the communication and the dates of first and last use;
  - The name of the registered principal approving the communication;
  - The date of approval; and
  - Information concerning the source of any statistical table, graph, or illustration.
FINRA Rule 2210: Filing Requirements – Retail Communications

- Filing requirements apply only to certain retail communications used with more than 25 retail customers within 30 calendar days.

- Communications that must be filed 10 business days prior to first use:
  - New member firms must file certain retail communications for one year based on their membership effective date. These include:
    - Electronic or public media (i.e. any generally accessible website, newspaper, magazine, radio, television, signs, and billboards.)
  - Security futures
  - Registered investment company ranking that is not generally published or is the creation of the investment company

- Options retail communications used prior to delivery of the Options Disclosure Documents (ODD) must also be filed 10 calendar days prior to use. (See FINRA Rule 2220.)
FINRA Rule 2210: Filing Requirements – Retail Communications

Retail communications that must be filed within 10 business days of first use include:

- Registered investment companies
  - Mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, variable annuities and variable life insurance products;
- Public direct participation programs;
- Investment analysis tool templates and reports; and
- CMOs and derivative products registered under the Securities Act of 1933.
FINRA Rule 2210: Exceptions to the Filing Requirements

- Institutional communications
- Correspondence
- Non-commissioned reprints or excerpts of any article issued by an unaffiliated publisher without material change
  - Retail communications that do not make any financial or investment recommendation or otherwise promote a product or service
- Previously-filed material
- Statistical or non-narrative updates to previously-filed template communications
  - Interactive social media posts
FINRA Rule 2210: Exceptions to the Filing Requirements

- “Laundry list” of investment products
- Press releases made available only to the media
  - Press releases issued by closed-end investment companies that are subject to the NYSE’s “Immediate Release Policy” under Section 202.06
  - Research reports on exchange-listed securities
  - Free writing prospectuses that are not required to be filed with the SEC
- Prospectuses
Submitting Communications to FINRA

- Communications subject to the filing requirements must be filed with the Advertising Regulation Department.
- The Department will also accept voluntary filings.
- Filings should be sent electronically through the Advertising Regulation Electronic Files (AREF) system (www.finra.org/AREF).

Filing submissions should include:
- Descriptive title of ad; name and title of the registered principal approving the communication; date of approval; actual or anticipated date of first use; and intended audience and use.

Firms will receive review letters electronically.
- Firms may request a follow-up discussion of a review letter.
FINRA Rule 2210: Content Standards

General standards for all communications

• Communications must be fair and balanced, and must provide a sound basis for evaluating the facts regarding any product or service.

• Material information that would cause the communication to be misleading may not be omitted:
  – For example, risks, fees, and restrictions or conditions.

• False, exaggerated, unwarranted, promissory, or misleading statements or claims are prohibited.

• Important or material information should not be in legends and footnotes.
FINRA Rule 2210: Content Standards

General standards for all communications

- Clarity and context
- Nature of the audience
- Communications may not predict or project performance or imply that past performance will recur, except:
  - Hypothetical illustrations of mathematical principles (e.g., compound interest) that do not predict or project performance;
  - Investment analysis tools (FINRA Rule 2214); and
  - Reasonable price targets in research reports (NASD Rule 2711).
FINRA Rule 2210: Other Content Standards

Retail communications and correspondence

- **Disclosures:**
  - FINRA member name
  - Tax-free claims and tax-deferred compounding
  - Fees and expenses for open-end mutual fund performance
  - Regarding testimonials

- **Use of FINRA name and linking to the FINRA website**

Retail communications

- **Comparisons must disclose all material differences**
- **Recommendations: disclosure concerning conflicts of interest**
FINRA Rule 2210: Public Appearances

- Rule covers participation in seminars, forums, radio or TV interviews, or other unscripted speaking activities.
- General content standards apply.
- Associated persons must have a reasonable basis for any recommendations and must disclose:
  - The nature of any more than a nominal financial interest; and
  - Any other actual material conflict of interest.
- Each firm must establish appropriate procedures for the supervision of public appearances.
- Videos or audio recordings of public appearances placed on a website are considered static content.
# Social Media: FINRA Regulatory Notices

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<tr>
<th>10-06 Guidance on Blogs and Social Networking Websites (January 2010)</th>
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<td>• Recordkeeping responsibilities</td>
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<td>• Types of interactive electronic forums</td>
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<td>• Supervision of social media sites</td>
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<td>• Third-party posts</td>
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<th>11-39 Social Media Websites and the Use of Personal Devices for Business Communications (August 2011)</th>
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<td>• Recordkeeping</td>
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<td>• Links to third-party sites</td>
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<td>• Data feeds</td>
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In addition: SEC IM Guidance Update 2013-01 – March 2013
Social Media

- New medium, same rules apply:
  - Social media extends a firm’s ability to communicate, but does not change the basic rules of the road.
  - The rules are designed to protect investors from false, misleading, or exaggerated statements or claims and from omissions of necessary information.
<table>
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<th>Social Media Compliance: Core Concepts</th>
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<tr>
<td><strong>Personal vs. business use</strong></td>
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<td><strong>Adoption and entanglement</strong></td>
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<td>- Third-party content</td>
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Supervision – Guidance for Social Media

From FINRA Regulatory Notice 11-39:

- Registered principal must review prior to use any social media site that an associated person intends to use for business.
- May only approve sites if the principal has determined the associated person can and will comply with applicable rules.
- Must review site in the form in which it will be launched.
- Links to third-party sites:
  - Firms may not establish a link to any third-party site that the firm knows or has reason to know contains false or misleading content.
  - A firm may be responsible for content on a linked third-party site if the firm has adopted or is entangled with its content.
Sample Advertisement 1
If you have money in CDs, IRAs, Annuities, Stocks, Bonds, Mutual Funds or Real Estate, it’s taken you a lifetime of hard work to accumulate those assets. Learn how to protect them from risk, erosion, and taxation . . .

You are invited to attend a FREE Workshop and Luncheon:

RETIREMENT INVESTMENT STRATEGIES

Wednesday, May 27, 2015
6:00 p.m. – 8:30 p.m.
Marx Bros. Chophouse of Washington
33 Duck Soup Street, Washington, D.C. 20036

Please join us for dinner and learn to:

• Keep more of your social security income tax-free
• Convert your IRA from taxable to tax-free
• Eliminate income taxes on interest income forever
• Invest in the Stock market with no possibility of loss
• Lock in Stock market gains and never pay capital gains or income taxes again
• Differentiate between fixed, variable, and indexed annuities
• Lower or eliminate investment fees
• Avoid costs and delays of PROBATE through trusts
• Earn 6% safely with 6 different methods
• Protect your assets from TAXES and INFLATION
• Provide custodial care at home or in a private facility at no cost to your estate

This is a rare opportunity to hear from the nationally recognized and respected financial guru, Otis P. Driftwood. Mr. Driftwood has authored several best-selling books on personal finance and has lectured extensively on overcoming the most critical financial challenges facing investors today.

Make sure your dollars will last longer than your years.

Call for reservations! 555-867-5309
Cocoanuts Investment Brokers. Inc
Member, FINRA/SIPC
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“IT’S O.K. TO BE THE 1%”

budfox@JacksonSteinem&co.com: Ive been right on target for 85% for the past 15 years. BSTR is as close to a sure thing as youll evr own!
May 18, 2015

budfox@JacksonSteinem&co.com: Have faith, Ed! Dont sell yet. BSTR will resume its upwards climb soon.
May 15, 2015

EdRooney: I've got a bad feeling about this! BSTR keeps going down! Why! Should I bail?
May 12, 2015

AlBundy: I'm going to have to sell a lot of shoes if BSTR does not go back up! I'm betting on you Bud!
May 9, 2015

budfox@JacksonSteinem&co.com: If ur going to make $$ in the stock market, you need to stay invested. Cold feet? Chicken livered?  Then invest in CDs and stay poor.
April 28, 2015

George: What’s going on with BSTR?! U said it was a sure thing! Why is it going down? I’m cutting my losses! I’m out. Back to the bank I go.
April 25, 2015

Bud Fox

Financial Advisor, Broker, Trader, Market Strategist

budfox@JacksonSteinem&co.com

212-867-5309

-15 years industry experience
-1000s of satisfied investors
-Stocks, bonds, munis, hedge funds, alternative investments

-Tax advice available through affiliated business partners

Website:
www.bud-fox-profits.com

Full bio here
Clucker

“IT’S O.K. TO BE THE 1%”

BarneyFife: Golly! Thanks for the recommendation Bud! I’m all in.
March 14, 2015

budfox@JacksonSteinem&co.com: BSTR is at $10.75 and climbing! Jump on board for the ride.
March 10, 2015

MrBigglesworth: Have read your clucks on BSTR. Sounds like an excellent oppy. Thanks for the tip. Going long on BSTR.
March 10, 2015

AlBundy: Bud, you sound like you know what your doing. I’m placing an order--hope to watch BSTR grow. Tired of selling shoes.
February 10, 2015

budfox@JacksonSteinem&co.com: BSTR-Strong earnings due to increase in baggage and other user fees. Strong earnings=higher share price!
January 28, 2015

budfox@JacksonSteinem&co.com: Keep an I on BSTR! Just broke above $9/shr. Margins and institutionals can now “play ball!” Upgraded to $10 but should be $12+.
January 21, 2015

Budfox@jacksonSteinem&co.com: Now recommending Blue Star Airlines BSTR. Fundamentals are strong and stock is way undervalued. At $10 but should be $12. Get in now.
January 15, 2015

Bud Fox

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