Fundamentals of FINRA Rule 2210 (B2BC Track)
Thursday, May 16
1:30 p.m. – 2:30 p.m.

This session is designed for compliance and marketing professionals who are new to FINRA’s advertising rules or experienced practitioners interested in a refresher. A panel of FINRA professionals provides an overview of FINRA’s Communications With the Public rule, including filing requirements, internal approval and supervision, and content standards. FINRA panelists answer questions about how to apply the rules to financial services communications and marketing materials. Panelists also discuss the core advertising concepts as they apply to social media.

Moderator: Gregory Riviello
    Director
    FINRA Advertising Regulation

Panelists: Pramit Das
    Associate Director, Technology
    FINRA Advertising Regulation

    Stephanie Gregory
    Principal Analyst, Advertising Regulation
    FINRA Advertising Regulation

    Steven O'Mara
    Associate Director, Advertising Regulation
    FINRA Advertising Regulation
Fundamentals of FINRA Rule 2210 (B2BC Track) Panelist Bios:

Moderator:

Gregory Riviello is a director in FINRA’s Advertising Regulation Department which is responsible for the regulation of FINRA member firms’ communications with the public. Mr. Riviello is responsible for supervising the daily activities of staff devoted to the review of communications filed with the Department. He provides guidance to Department staff and FINRA firms on the application of the advertising rules and interpretations and also assists with the development of these rules. His other responsibilities include coordinating the Department’s training and quality control functions. Mr. Riviello has spoken about various advertising regulation topics at industry events and at the FINRA Advertising Regulation Conferences. Mr. Riviello has 39 years of experience in the securities industry including 29 years with the Advertising Regulation Department. He is a graduate of West Chester State University in West Chester, Pennsylvania, and holds an MBA from the University of Maryland.

Panelists:

Pramit Das is Associate Director-Technology of FINRA’s Advertising Regulation Department. In this role, his responsibilities include managing a filings review group; assisting with administration of the filings review program; developing and maintaining the department’s technology needs; providing education to members, FINRA staff and other regulatory staff; and participating in certain rule amendment and rulemaking projects as necessary. He served in the same role at NASD before its 2007 consolidation with NYSE Member Regulation. Prior to joining NASD in 1994, Mr. Das worked for Metropolitan Life Insurance Company and Arthur Andersen & Co. He holds an MBA in Finance from the University of Maryland, College Park, and an MA in Financial Economics from Clemson University, Clemson, South Carolina. He was also Series 7 and 63 registered.

Stephanie Gregory is Principal Analyst in FINRA’s Advertising Regulation Department on the Complex Review Team. Prior to joining FINRA in 2004, Ms. Gregory worked in compliance and advertising review with a member firm. Ms. Gregory received a bachelor’s degree in Economics and Political Science from Boston University, and her law degree from Pennsylvania State University Dickinson School of Law.

Steven O’Mara is Associate Director in FINRA’s Advertising Regulation Department. Before joining Advertising Regulation, he spent three years in the Market Regulation Department. He also worked for four years as a compliance officer for a regional brokerage firm. Mr. O’Mara holds a master’s degree in business from Johns Hopkins University and a bachelor’s degree from Saint Anselm College.
Fundamentals of FINRA Rule 2210 (B2BC)
Panelists

Moderator

- Gregory Riviello, Director, FINRA Advertising Regulation

Panelists

- Pramit Das, Associate Director, Technology, FINRA Advertising Regulation
- Stephanie Gregory, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation
- Steven O’Mara, Associate Director, FINRA Advertising Regulation
FINRA Advertising Regulation Department

- Advertising filings review program
- Complex reviews
- Sweeps
- Member outreach and education

Contact information

Website: www.finra.org/Advertising

Telephone number: 240-386-4500
FINRA Rule 2210: Introduction and 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.
Supervision of Institutional Communications

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. Each firm must adopt procedures to supervise this area of its business.
Supervision of Correspondence

- **Correspondence**
  - Flexible supervision:
    - Risk-based procedures
    - Training
    - Surveillance
    - Follow-up to correct problems
An appropriately qualified, registered principal must approve each retail communication prior to use or filing with FINRA.

- Exceptions 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 on an online interactive electronic forum (social media);
  - Are excepted from the definition of “research report” (e.g., market letters);
  - Are filed by another firm, and found by FINRA to be consistent with standards.
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:
  - Copy of the communication and the dates of first and last use;
  - Name of the registered principal approving the communication;
  - Date of approval; and
  - Information concerning the source of any statistical table, graph, or illustration.
Filing Requirements for Retail Communications

- Filing requirements apply only to certain retail communications.

- Retail 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.)
  - Registered investment company ranking that is not generally published or is the creation of the investment company.
Filing Requirements for Retail Communications

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

- Promotion or recommendation of specific registered investment companies or families:
  - Mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, variable annuities, and variable life insurance products;
- Public direct participation programs; and
- CMOs and derivative products registered under the Securities Act of 1933.
Exceptions to the Filing Requirements

- Institutional communications and correspondence
- Independently prepared reprints or excerpts of articles issued by unaffiliated publishers used without material change
- Retail communications that do not make any financial or investment recommendation or promote a product or service
- Previously filed communications not materially changed
- “Laundry list” of investment products
Exceptions to the Filing Requirements

- Statistical or non-narrative updates to previously filed templates
- Templates containing non-predictive narrative information
- Press releases made available only to the media
- Research reports on exchange-listed securities
- Interactive social media posts
- Prospectuses, annual/semi-annual reports filed with the SEC
- Free writing prospectuses not required to be filed with the SEC
General 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.

- Material information should not be in legends and footnotes.
General 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 for:
  - Hypothetical illustrations of mathematical principles, such as compound interest, that do not predict or project performance;
  - Investment analysis tools (FINRA Rule 2214); and,
  - Reasonable price targets in equity research reports (FINRA Rule 2241).
Retail communications and correspondence

- FINRA member name
- Tax-free claims and tax-deferred compounding
- Fees and expenses for open-end management investment company performance
- Testimonials
Specific Content Standards

- Retail communications
  - Comparisons must disclose all material differences
  - Recommendations: disclosure concerning conflicts of interest
  - BrokerCheck

- All communications
  - Use of FINRA name and linking to the FINRA website
SEC Rules – Investment Company Communications

- SEC Rule 482 governs communications used prior to delivery of the prospectus.
  - Performance Standards
  - Disclosure Requirements
  - Presentation Standards
- SEC Rule 34b-1 governs communications used after delivery of the prospectus and cross references Rule 482.
- SEC Rule 135a applies to a generic investment company communication that does not refer to any particular fund or security.
FINRA Rule 2211 – Variable Insurance Products

Specific Standards for Variable Annuity and Variable Life Insurance Communications

- Identify and provide a sound basis to evaluate the product.
- Address the risks.
- Disclose fees, tax liabilities and potential penalties.
- Balance any discussion of investment features with a discussion of the insurance component.
- Disclose the long-term nature of a Variable Annuity, particularly for retirement.
- When addressing riders, clearly explain how they work.
- Explain limitations of any guarantees mentioned.
Variable Insurance Product Performance Standards

- **Variable Annuities:**
  - Apply SEC Rule 482 or 34b-1.
  - Net of fees & expenses.
  - Keyed off inception date of separate account.

- **Variable Life Insurance:**
  - Apply FINRA Rule 2210(d)(1)(A).
  - At a minimum, deduct investment option management fees.
  - Prominently disclose fees/charges deducted & not deducted.
# Social Media: Core Concepts

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<th>Personal vs. business use</th>
<th>• Recordkeeping</th>
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<td>Static vs. interactive communications</td>
<td>• Supervision</td>
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- **Recordkeeping**
- **Supervision**
- **Third-party content**
Social Media: FINRA Regulatory Notices

10-06: Guidance on Blogs and Social Networking Web Sites (January 2010)
- Recordkeeping responsibilities
- Suitability responsibilities
- Types of interactive electronic forums
- Supervision of social media sites
- Third-party posts

11-39: Social Media Websites and the Use of Personal Devices for Business Communications (August 2011)
- Recordkeeping
- Supervision
- Links to third-party sites
- Data feed

17-18: Guidance on Social Networking Websites and Business Communication (April 2017)
- Text messaging
- Personal communications
- Hyperlinks and sharing
- Native advertising
- Testimonials and endorsements
- Correction of third-party content
- BrokerCheck

In addition: SEC IM Guidance Update 2013-01 – March 2013
FINRA advertising rules

- 2210 – Communications With the Public
- 2211 – Communications With the Public About Variable Life Insurance and Variable Annuities
- 2212 – Use of Investment Companies Rankings in Retail Communications
- 2213 – Requirements for the Use of Bond Mutual Fund Volatility Ratings
- 2214 – Requirements for the Use of Investment Analysis Tools
- 2215 – Communications With the Public Regarding Security Futures
- 2216 – Communications With the Public About Collateralized Mortgage Obligations
Resources

- FINRA advertising rules
  - 2220 – Options Communications
  - 2241 – Research Analysts and Research Reports
  - 2242 – Debt Research Analysts and Debt Research Reports
  - 3110 – Supervision
  - 3160 – Networking Arrangements between Members and Financial Institutions
Resources

SEC advertising rules enforced by FINRA

- SEC Rule 482 – Advertising by an Investment Company as Satisfying Requirements of Section 10
- SEC Rule 34b-1 – Sales Literature Deemed to be Misleading
- SEC Rule 135A – Generic Advertising
- SEC Rule 134 – Communications Not Deemed a Prospectus
- SEC Rule 433 – Conditions to Permissible Post-Filing Free Writing Prospectuses
Resources

- MSRB and SIPC advertising rules enforced by FINRA
  - Municipal Securities Rulemaking Board (MSRB) Rule G-21 Advertising
  - Securities Investor Protection Corporation (SIPC) Advertising By-Law Article 10, Section 4
Questions and Answers
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Resources

FINRA Resources

- FINRA Rule 2210. Communications With the Public
- FINRA Rule 2211. Communications With the Public About Variable Life Insurance and Variable Annuities
- FINRA Rule 2212. Use of Investment Companies Rankings in Retail Communications
- FINRA Rule 2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings
- FINRA Rule 2214. Requirements for the Use of Investment Analysis Tools
- FINRA Rule 2215. Communications With the Public Regarding Security Futures
- FINRA Rule 2216. Communications With the Public About Collateralized Mortgage Obligations
- FINRA Rule 2220. Options Communications
- FINRA Rule 2241. Research Analysts and Research Reports
- FINRA Rule 2242. Debt Research Analysts and Debt Research Reports
- FINRA Rule 3110. Supervision
- FINRA Rule 3160. Networking Arrangements between Members and Financial Institutions
  

SEC, MSRB and SIPC advertising rules enforced by FINRA

- SEC Rule 482 – Advertising by an Investment Company as Satisfying Requirements of Section 10
  
  www.sec.gov/rules/final/33-8294.htm
  www.law.cornell.edu/cfr/text/17/230.482

- SEC Rule 34b-1 – Sales Literature Deemed to be Misleading
  
  www.sec.gov/rules/final/33-8294.htm
  www.law.cornell.edu/cfr/text/17/270.34b-1

- SEC Rule 135A – Generic Advertising
  
  www.law.cornell.edu/cfr/text/17/230.135a

- SEC Rule 134 – Communications Not Deemed a Prospectus
  
  www.law.cornell.edu/cfr/text/17/230.134

- SEC Rule 433 – Conditions to Permissible Post-Filing Free Writing Prospectuses
  
  www.law.cornell.edu/cfr/text/17/230.433

- Municipal Securities Rulemaking Board (MSRB) Rule G-21 Advertising
  

- Securities Investor Protection Corporation (SIPC) Advertising By-Law Article 10, Section 4
  
  www.sipc.org/about-sipc/statute-and-rules/bylaws
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