



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Advertising Compliance Boot Camp: Fundamentals of FINRA Rule 2210

Thursday, October 24, 2019

11:30 a.m. – 12:30 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. Panelists answer questions about how to apply the rules to financial services communications and marketing materials.

Moderator: Derek Ashworth
Associate Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Nancy Damiano
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Steven O'Mara
Associate Director, Advertising Regulation
FINRA Advertising Regulation

Mark Smith
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Advertising Compliance Boot Camp: Fundamentals of FINRA Rule 2210 Panelist Bios:

Moderator:

Derek Ashworth is Associate Director in FINRA's Advertising Regulation Department. The department protects investors by ensuring broker-dealer members of FINRA use communications that are fair, balanced and not misleading. Mr. Ashworth's primary responsibility is managing staff members dedicated to the routine review of member firm communications. Mr. Ashworth also participates in the Department's outreach efforts including serving as a panelist in prior FINRA conferences and presenting during selected FINRA Compliance Boot Camps. He has been with the Advertising Regulation Department for 19 years. Prior to joining FINRA, Mr. Ashworth was a program manager for a business and education partnership at Nova Southeastern University in Fort Lauderdale, FL. Previous to this role, he was a specialty banker and registered representative with First Union in West Palm Beach, FL. Mr. Ashworth received his bachelor's degree from Stetson University and completed his M.B.A. at Johns Hopkins University.

Speakers:

Nancy Damiano is a manager in FINRA's Advertising Regulation Department. Previously, she was an associate manager and analyst in the Department, serving in similar roles at NASD before its 2007 consolidation with NYSE Member Regulation, which resulted in the formation of FINRA. Prior to joining NASD, Mrs. Damiano was a registered principal at Legg Mason in Baltimore, MD. Previous to this role, she was a wholesaler with Legg Mason in Baltimore, MD. Mrs. Damiano received her bachelor's degree from Christopher Newport University and completed her M.B.A. at Strayer University.

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.

Mark E. Smith, Principal Analyst, has been with FINRA's Advertising Regulation Department for 12 years. He came to Advertising Regulation from Disclosure Review in the Central Registration Department. Prior to FINRA, Mr. Smith worked in printing and bindery and then office support services. He holds degrees from San Diego State University and Georgetown University Law Center and is a member of the Bar in Maryland, Virginia and the District of Columbia.



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Moderator: Derek Ashworth (moderator)
Associate Director
FINRA Advertising Regulation

Panelists: Steve O'Mara
Associate Director
FINRA Advertising Regulation

Nancy Damiano
Principal Analyst
FINRA Advertising Regulation

Mark Smith
Principal Analyst
FINRA Advertising Regulation

- I. Introduction
- II. Advertising Regulation Department overview
- III. Definitions, supervision and filing requirements
 - a) Internal approval and recordkeeping
 - b) Retail filing requirements and exemptions
- IV. Submitting communications for review
 - a) Advertising Electronic Filing System (AREF)
 - b) Submission information
 - c) Content standards
 - a) General content standards
 - b) Specific content standards
- V. Wrap-up (Questions)



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Panelists

■ Moderator

- **Derek Ashworth, Associate Director, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Nancy Damiano, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**
- **Steven O'Mara, Associate Director, Advertising Regulation, FINRA Advertising Regulation**
- **Mark Smith, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**

By the end of the session, you should know:

- **The role of the Advertising Regulation Department.**
- **The definitions, approval, review and recordkeeping requirements in FINRA Rule 2210.**
- **The filing requirements and filing exemptions.**
- **The content standards of FINRA Rule 2210.**
- **How to comply with these content standards.**

FINRA Advertising Regulation Department

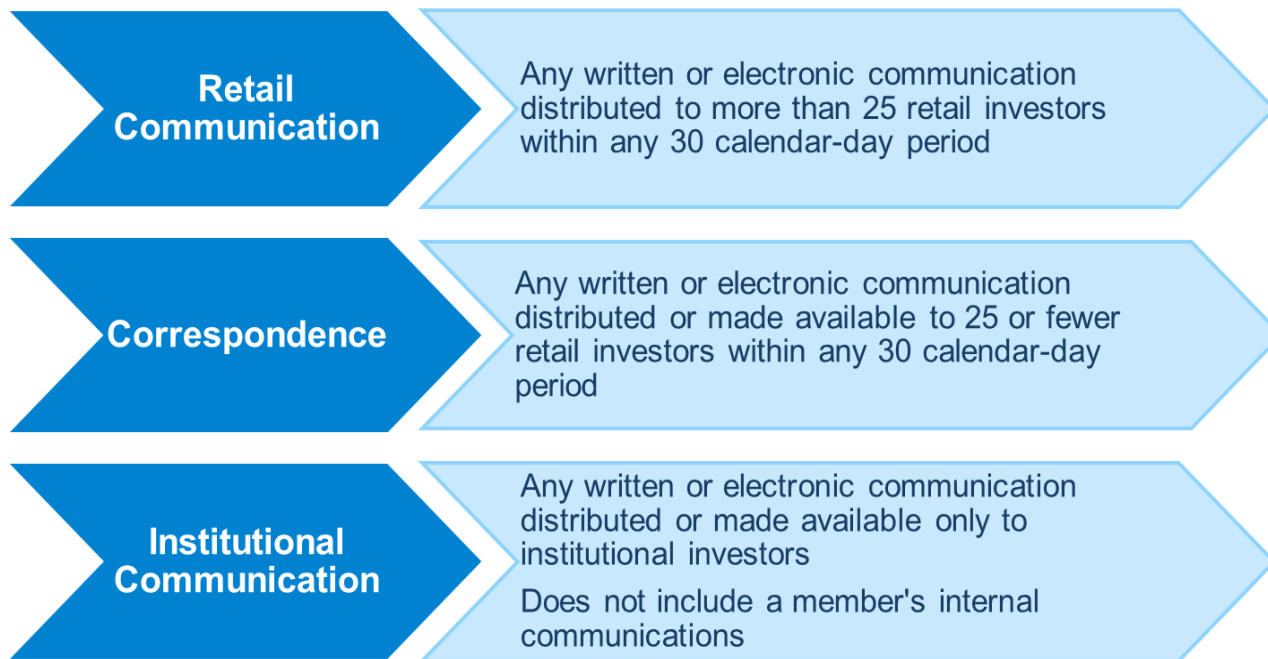
- Advertising filings review program
- Complex reviews
- Sweeps
- Member outreach and education

Contact information:

Website: www.finra.org/Advertising

Telephone number: 240-386-4500

FINRA Rule 2210: Introduction and Definitions



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; however, 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

Internal Approval of Retail Communications

- **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).
 - **Special exception for communications filed by another firm, found by FINRA to be consistent with standards, and used without material change.**

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

■ Firms must file within 10 business days of first use retail communications that:

- **Promote or recommend specific registered investment companies or families:**
 - Mutual funds, exchange-traded funds, closed-end funds, unit investment trusts, variable annuities, and variable life insurance products;
- **Concern public direct participation programs; or**
- **Concern CMOs and derivative products registered under the Securities Act of 1933.**

Exceptions to the Filing Requirements

- **Institutional communications**
- **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 or semi-annual reports filed with the SEC
- Free writing prospectuses that are not required to be filed with the SEC

Submitting Communications to FINRA

- The Department also accepts voluntary filings.
- Filings should be sent electronically through the Advertising Regulation Electronic Files (AREF) system.
- Filing submissions should include:
 - Descriptive title of ad;
 - Name and title of the principal who approved the communication;
 - Date of approval;
 - Actual or anticipated date of first use; and,
 - Intended audience and use.

FINRA Rule 2210 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.**
- **Important or material information should not be in legends and footnotes.**

FINRA Rule 2210 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).

FINRA Rule 2210 Specific Content Standards

■ 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

FINRA Rule 2210 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

Public Appearances

- Rule covers participation in seminars, forums, radio or TV interviews, or other unscripted speaking activities.
- General content standards of FINRA Rule 2210 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.

Public Appearances

- Each firm must establish appropriate procedures for the supervision of public appearances.
- Videos or audio recordings of public appearances placed on a website must be approved by a principal prior to posting.
- Any scripts, slides, handouts or other written materials used in conjunction with public appearances must comply with all applicable provisions.

Resources

■ 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**
- **2220 – Options Communications**

Resources

■ FINRA advertising rules

- 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, MSRB and SIPC 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
- Municipal Securities Rulemaking Board (MSRB) Rule G-21 Advertising By Brokers, Dealers or Municipal Securities Dealers
- Municipal Securities Rulemaking Board (MSRB) Rule G-40 Advertising By Municipal Advisors
- Securities Investor Protection Corporation (SIPC) Advertising By-Law Article 10, Section 4

Questions and Answers



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FINRA Advertising Rules

- FINRA Rule 2210. Communications with the Public
www.finra.org/rules-guidance/rulebooks/finra-rules/2210
- FINRA Rule 2211. Communications with the Public about Variable Life Insurance and Variable Annuities
www.finra.org/rules-guidance/rulebooks/finra-rules/2211
- FINRA Rule 2212. Use of Investment Companies Rankings in Retail Communications
www.finra.org/rules-guidance/rulebooks/finra-rules/2212
- FINRA Rule 2213. Requirements for the Use of Bond Mutual Fund Volatility Ratings
www.finra.org/rules-guidance/rulebooks/finra-rules/2213
- FINRA Rule 2214. Requirements for the Use of Investment Analysis Tools
www.finra.org/rules-guidance/rulebooks/finra-rules/2214
- FINRA Rule 2215. Communications with the Public Regarding Security Futures
www.finra.org/rules-guidance/rulebooks/finra-rules/2215
- FINRA Rule 2216. Communications with the Public about Collateralized Mortgage Obligations
www.finra.org/rules-guidance/rulebooks/finra-rules/2216
- FINRA Rule 2220. Options Communications
www.finra.org/rules-guidance/rulebooks/finra-rules/2220
- FINRA Rule 2241. Research Analysts and Research Reports
www.finra.org/rules-guidance/rulebooks/finra-rules/2241
- FINRA Rule 2242. Debt Research Analysts and Debt Research Reports
www.finra.org/rules-guidance/rulebooks/finra-rules/2242

- FINRA Rule 3110. Supervision
www.finra.org/rules-guidance/rulebooks/finra-rules/3110
- FINRA Rule 3160. Networking Arrangements between Members and Financial Institutions
www.finra.org/rules-guidance/rulebooks/finra-rules/3160

SEC, MSRB and SIPC Advertising Rules

- SEC Rule 482 – Advertising by an Investment Company as Satisfying Requirements of Section 10
www.govinfo.gov/content/pkg/CFR-2010-title17-vol2/pdf/CFR-2010-title17-vol2-sec230-482.pdf
- SEC Rule 34b-1 – Sales Literature Deemed to be Misleading
https://gov.ecfr.io/cgi-bin/text-idx?SID=49c9975ec264654255254708eeb4d17c&mc=true&node=se17.4.270_134b_61&rgn=div8
- SEC Rule 135A – Generic Advertising
https://gov.ecfr.io/cgi-bin/text-idx?SID=49c9975ec264654255254708eeb4d17c&mc=true&node=se17.3.230_1135a&rgn=div8
- SEC Rule 134 – Communications Not Deemed a Prospectus
https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=49c9975ec264654255254708eeb4d17c&mc=true&n=pt17.3.230&r=PART&ty=HTML#se17.3.230_1134
- SEC Rule 433 – Conditions to Permissible Post-Filing Free Writing Prospectuses
https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=&SID=49c9975ec264654255254708eeb4d17c&mc=true&n=pt17.3.230&r=PART&ty=HTML#se17.3.230_1433
- MSRB Rule G-21 - Advertising by Brokers, Dealers or Municipal Securities Dealers
www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-21.aspx
- MSRB Rule G-40 – Advertising by Municipal Advisors
www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-40.aspx
- SIPC Advertising By-Law Article 10, Section 4 – Member Advertising
www.sipc.org/about-sipc/statute-and-rules/bylaws#10