



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Advertising Compliance Boot Camp: Select Topics

Thursday, October 24, 2019

1:45 p.m. – 2:45 p.m.

Designed for new compliance and marketing professionals, FINRA panelists provide insights into the core concepts of social media and digital communications, as well as the basic requirements and frequently raised regulatory compliance questions with respect to communications concerning mutual funds, ETFs and variable insurance products. The panel also features sample advertisements and important do's and don'ts.

Moderator: Anthony Maher
Associate Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Steven Choi
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Thomas Dineen
Associate Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Joseph George
Associate Director, Advertising Regulation
FINRA Advertising Regulation

Advertising Compliance Boot Camp: Select Topics Panelist Bios:

Moderator:

Anthony T. Maher is Associate Director in FINRA's Advertising Regulation Department. He served in a similar role at NASD before its 2007 consolidation with NYSE Member Regulation, which resulted in the formation of FINRA. His chief responsibility is managing staff members dedicated to the routine review of member advertisements. Mr. Maher also speaks at FINRA and industry conferences and events, including the Department's Advertising Regulation Conference, where he conducts a highly interactive educational "hands-on" advertising review workshop. Prior to joining the NASD in 1995, he was a registered principal and a compliance analyst for a broker-dealer subsidiary of a life insurance company. Mr. Maher holds a J.D. from George Mason University Antonin Scalia Law School, a master's degree from Georgetown University and a bachelor's degree from George Mason University.

Speakers:

Steven Choi is Principal Analyst in FINRA's Advertising Regulation Department. Prior to joining FINRA/NASD in 2006, he worked in the Private Client Management Group at Legg Mason, and as a Financial Advisor in the Global Private Client Group at Merrill Lynch. Mr. Choi holds a bachelor's degree in Art History from Williams College.

Thomas Dineen is Associate Principal Analyst in FINRA's Advertising Regulation Department. Prior to joining FINRA/NASD in 2007, he worked as an investment consultant at TD Ameritrade, a financial advisor at Ameriprise, and as a corporate lawyer. Mr. Dineen holds a bachelor's degree in English from Columbia University and law degrees from Oxford University and the University of Pennsylvania.

Joseph George is Associate Director in FINRA's Advertising Regulation Department, where he supervises analysts who review communications with the public for compliance with applicable rules. He has been with the Department for more than 22 years and has spoken on panels at Advertising Regulation Department Conferences over the past 17 years. Prior to joining FINRA, he worked for New York Life as a registered representative and was a project manager with Computer Sciences Corporation. Mr. George holds a B.A. in Economics from the University of Maryland.



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- I. Introduction
- II. SEC rules for Investment Company Communications
- III. Communications Concerning Variable Insurance Products
- IV. Communications Concerning Options
- V. Investment Company Rankings
- VI. Investment Analysis Tools
- VII. Social Media and Digital Communications
- VIII. Q&A and Wrap-up



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Panelists

■ Moderator

- **Anthony Maher, Associate Director, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Steven Choi, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**
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Agenda

- **Applicable SEC Rules (disclosures and performance standards)**
- **Standards applicable to variable insurance products**
- **Guidance pertaining to options communications**
- **Presentation of investment company rankings**
- **Key points regarding investment analysis tools**
- **Core concepts of social media and digital communications**

SEC Rules – Investment Company Communications

- SEC Rule 482 governs communications used prior to delivery of the prospectus.
- SEC Rule 34b-1 governs communications used after or concurrently with delivery of the prospectus.
- SEC Rule 135a applies to generic communications about investment company securities and therefore, may not refer to a particular fund or security. Such communications may:
 - describe services/benefits offered by a sponsor/complex;
 - include details about the distributor; and
 - invite readers to request further information.

SEC Rule 482 Disclosures

■ Prospectus offer – Include all four elements

- Advise investors to consider objectives, risks, and charges and expenses carefully.
- Explain that the prospectus or summary prospectus contains this and other information about the investment company.
- Identify a source for obtaining the prospectus.
- Inform investors to read carefully the prospectus before investing.

■ Money market legend

- For each money market fund named, include the appropriate legend.
- Each legend must be clearly associated with the fund to which it applies.

Money Market Fund Disclosures

Institutional Money Market Funds: *You could lose money by investing in the Fund. Because the share price of the Fund will fluctuate, when you sell your shares they may be worth more or less than what you originally paid for them. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.*

Government Money Market Funds relying on ability to impose liquidity fees and suspend redemptions: *You could lose money by investing in the fund. Although the Fund seeks to preserve the value of your investment at \$1.00 per share, it cannot guarantee it will do so. The Fund may impose a fee upon sale of your shares or may temporarily suspend your ability to sell shares if the Fund's liquidity falls below required minimums because of market conditions or other factors. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support at any time.*

Government Money Market Funds not relying on ability to impose fees and suspend redemptions: *You could lose money by investing in the Fund. Although the Fund seeks to preserve the value of your investment at \$1.00 per share, it cannot guarantee it will do so. An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.*

SEC Rule 482 Disclosures

■ Performance – Eight elements

- Performance data represents past performance;
- Past performance does not guarantee future results;
- Current performance may be lower or higher than performance data quoted;
- Investment return and principal value will fluctuate;
- When redeemed, shares may be worth more or less than their original cost;
- Identify a source to obtain performance current to the most recent month-end;
- Disclose, as applicable, maximum amount of sales load or other nonrecurring fee; and
- If load or fee not reflected, load or fee would reduce performance.

Note: Requirements for Expense Ratio – FINRA Rule 2210(d)(5)

SEC Rule 482 Disclosures

■ Presentation standards

- **Five requirements:**
 - Legibility
 - Type size
 - Type style
 - Prominence
 - Proximity (only for performance disclosures)
- **Specialized disclosure requirements for electronic media, radio, or television advertisements**

SEC Rule 482 Performance

■ Performance standards

- **Non-money market funds:**

- Current yield
- Taxable-equivalent yield
- Average annual total return (1-, 5-, and 10-year or since inception periods and current to most recent calendar quarter ended)
- After-tax return
- Other performance measures must reflect all elements of return

- **Money market funds:**

- Current yield
- Total return

SEC Rule 34b-1

- Applies to material preceded or accompanied by a current prospectus
- Standards are consistent with those of SEC Rule 482
 - Performance
 - Performance disclosure
 - Presentation standards
 - For money market funds, include the applicable money market fund disclosure
- May include non-standardized yield

SCIENTIFIC HORIZONS EQUITY FUND

Investment Objective

The Fund seeks long-term capital growth.

Principal Strategy

The fund offers the opportunity for long-term growth by investing in companies seeking scientific breakthroughs.

Total Returns as of 9/30/2019

Share Class	1 Year	5 Year	10 Year	Since Inception
A (without sales charges)	4.62%	3.98%	N/A	5.93%
A (with 5.5% sales charges)	-0.74	2.19%	N/A	5.48%
Horizons New Science Index	5.41%	4.42%	N/A	4.58%

Expense Ratio¹: Gross – 1.76% Net – 1.55%

¹The Advisor has contractually waived a portion of their fees/expenses until 12/31/2020. Performance would have been lower if waivers did not apply. Fund inception date 12/31/13.

Performance data shown represents past performance and is no guarantee of future results. Investment return and principal value will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than that quoted. To view performance current to the most recent month-end, visit ATMFunds.com.

SCIENTIFIC HORIZONS ETF



Excerpt

Investment Objective

The Fund seeks to track the price and performance, before fees and expenses, of the Horizons New Science Index.

Summary

The fund offers the opportunity for long-term growth by investing in companies seeking scientific breakthroughs.

Total Returns as of 9/30/2019

	1 Year	5 Year	10 Year	Since Inception
NAV Return	2.71%	9.03%	8.11%	7.98%
Market Return	2.68%	8.99%	8.08%	7.95%
Horizons New Science Index	2.78%	9.06%	8.12%	
Expense Ratio: 0.17%				

NAV Return represents the closing price of underlying securities.

Market Return is calculated using the price which investors buy and sell ETF shares in the market. The market returns in the table are based upon the midpoint of the bid/ask spread at 4:00pm EST, and do not represent the returns you would have received if you traded shares at other times.

Performance data shown represents past performance and is no guarantee of future results. Investment return and principal value will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than that quoted. To view current to the most recent month-end performance, visit ATMadvisorfunds.com

Closed-End Funds

■ Performance

- **SEC Rule 482 performance standards do not apply.**
- **FINRA Rule 2210 applies:**
 - Identify what types of fees and expenses apply to the fund.
 - Disclose which fees and expenses have been deducted and which have not been deducted.
 - If any fees have not been deducted, disclose that, had they been deducted, the performance would have been lower.

■ Distribution rates

- **Disclose how the rate was calculated.**
- **Affirmatively disclose whether the rate reflects return of principal.**

Distant Retirement Variable Annuity

Contract Inception: March 1, 2013

Separate Account Established: January 12, 2005

Average Annual Total Returns Through September 30, 2019

(performance reflects maximum contingent deferred sales charge)

Investment Option Name	Added to Separate Account	1-year	5-year	10-year	Since Inception
Large Cap Growth	1/12/2005	6.56%	-3.30%	8.32%	7.65%
Mid Cap Growth	12/31/2008	10.03%	-1.82%	10.38%	10.72%
Int'l Growth	12/31/2008	3.73%	1.08%	7.19%	2.73%
Small Cap Growth	5/2/2014	15.25%	12.39%	-	3.51%

Performance returns reflect an initial contract value of \$1,000. The performance data quoted represents past performance of the Sub-Accounts. The investment return and principal value will fluctuate so that an investor's shares, when redeemed, may be worth more or less than original cost. For performance information current to the most recent month end, please call 1-800-888-8888. Past performance does not guarantee future results. Current performance may be lower or higher than the performance data quoted. *Performance displayed is net of annual administrative, investment management, and mortality and expenses fees, as well as a declining contingent deferred sales charge (CDSC) of 4%, 3%, 2%, 1%, 0% over 4 years. The underlying Fund may incur a \$30 per year annual contract charge. Please see the latest prospectus for detailed information on fees and charges.*

There is a 10% federal penalty tax on certain withdrawals of earnings prior to age 59 ½. Earnings are subject to ordinary income tax upon withdrawal.

Distant Retirement Annuity Distributors, Inc. Member FINRA

Variable Annuity – Historical Performance

- **SEC Rule 482 performance standards apply.**
 - Average annual total returns.
 - Current to the most recent calendar quarter ended.
- **Must be net of all recurring fees and expenses (e.g., mortality and expense risk charges, annual administrative fees, expenses of the investment options).**
 - Annual contract charges can be deducted as a percentage of the average issued contract value.
- **Must be net of all non-recurring fees (e.g., sales loads and contingent deferred sales charges).**
- **Based on the inception date of the separate account, even if it predates the date of the inception of the contract.**

Variable Life Insurance – Historical Performance

- Typically appears in material preceded or accompanied by a current prospectus for the VLI contract and its underlying accounts.
- Performance standards of SEC Rule 34b-1 do not apply.
- General standards of FINRA Rule 2210 do apply.
- Performance must reflect, at a minimum, the deduction of all fees and charges applicable at the investment option level.
- Identify the fees and charges deducted; identify the fees and charges not deducted; and disclose that the performance would have been significantly lower if all fees and charges had been deducted.
- If applicable, include a statement suggesting that investors obtain a personalized performance illustration.

Variable Insurance Products – Applicable Rules

- **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 2214 (Requirements for the Use of Investment Analysis Tools)**
- **SEC Rule 482**
- **SEC Rule 34b-1**
- **SEC Rule 135a**

Variable Annuity Communications – Do's

- Identify the product being offered as a variable annuity.
- Address risks, fees, tax liabilities, and potential penalties, as needed.
- Disclose the long-term nature of a variable annuity.
- Discuss riders in a fair and balanced manner, clearly explain how they work, and adequately address fees and charges.
- Ensure material promoting a rider provides a sound basis to evaluate the variable annuity.
- Explain the limitations of any guarantees mentioned and indicate that they are based on the claims-paying ability of the issuing company.
- Reference both the variable annuity contract prospectus and the underlying funds prospectuses, as appropriate, within the prospectus offering statements.

Variable Annuity Communications – Don'ts

- **Promote a VA based solely on a specific feature like a rider or bonus credit.**
- **Imply that a VA is liquid or appropriate for a short-term investment.**
- **Represent that a VA's investment options are mutual funds.**
- **Imply that the issuer's ratings apply to the investment options.**
- **Highlight the fixed account's current rate of return in lieu of a complete discussion of the VA's investment options.**

Variable Life Insurance Communications – Do's

- Identify the product as variable life insurance.
- Balance any discussion of VLI investment features with a discussion of the insurance component.
- Balance a discussion of benefits with a discussion of costs and risks.
- Accompany discussions of guarantees with disclosure that they are subject to the claims-paying ability of the issuing life insurance company.
- Ensure comparisons to other products are fair, balanced, and complete.
- Reference both the VLI policy prospectus and the underlying funds prospectuses, as appropriate, within the prospectus offer statements.
- Accompany discussions regarding access to investment values with an explanation of the negative impact of loans and withdrawals.

Variable Life Insurance Communications – Don'ts

- **Imply that VLI is liquid or appropriate for short-term investment.**
- **Overemphasize the growth potential of VLI policies and the income that can be generated from such contracts.**
- **Represent that a VLI's investment options are mutual funds.**
- **Imply that the issuer's rating applies to the performance of the underlying investment options.**
- **Highlight the fixed account's rate of return in lieu of a complete discussion of all investment options.**
- **Promote riders without providing a sound basis to evaluate the VLI policy.**

Variable Life Insurance Hypothetical Illustrations

- Disclose prominently that the illustration is hypothetical, is intended to show how the performance of underlying investment accounts could affect the policy cash value and death benefit, and does not predict or project future performance.
- Use an assumed gross rate of return (maximum 12%) that is reasonable in light of market conditions; must disclose both the gross and the resulting net rates used.
- Include an assumed gross rate of return of 0% and disclose the 0% gross and resulting net rates used.
- Disclose and deduct the maximum guaranteed mortality and expense charges for each assumed rate of return.
- Reflect an arithmetic average of all expenses of investment options.
- Depict year-by-year account values.
- If the illustration exceeds ten years, then it may depict account values for years 1 through 10, then for every five years beyond the 10th year, and for the final year.

Communications Concerning Options

- **Subject to FINRA Rule 2220.**
- **Principal approval:**
 - Retail communications must be approved in advance.
 - Institutional communications and correspondence in accordance with the firm's supervisory procedures.
- **Communications used prior to delivery of the Options Disclosure Document (ODD):**
 - Retail communications must be filed 10 calendar days prior to use and require FINRA approval prior to use.
 - Must provide a source for obtaining a copy of the ODD.
 - Must be limited to general descriptions of the options being discussed.
 - Must not contain recommendations, performance, or names of specific securities.
- **Communications used with the ODD may be filed voluntarily.**

FINRA Rule 2212: Investment Company Rankings

Choose a Scientific Horizons Fund that has performed consistently well versus competitors over the long-term

Length of the period	Based on total return as of 9/30/19			Criteria of the ranking and ending date
	One-Year	Five-Year	Ten-Year	
Scientific Horizons Growth Fund <i>Category: Large Cap Growth</i>	16 out of 742	24 out of 518	19 out of 363	
Scientific Horizons Small Cap Fund <i>Category: Small Cap</i>	26 out of 445	8 out of 388	15 out of 321	
Scientific Horizons Income Fund <i>Category: Corporate Bond</i>	4 out of 623	35 out of 572	14 out of 407	

Past performance is no guarantee of future results. SC Rankings — SC Analytical Services, Inc. is an independent publisher of mutual fund rankings, records rankings for these and other Scientific Horizons Funds for one-year, five-year, and ten-year time periods. SC Analytical Services compares mutual funds within a universe of funds with similar investment objectives, including dividend reinvestment. SC Rankings are based on total return at net asset value and do not reflect sales charges. SC Rankings do not imply that the fund had a high total return. Rankings are for Class A shares only. Other classes may have different rankings. Past performance is no guarantee of future results.

Name of the ranking entity

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ATM Funds Distributors LLC Member FINRA

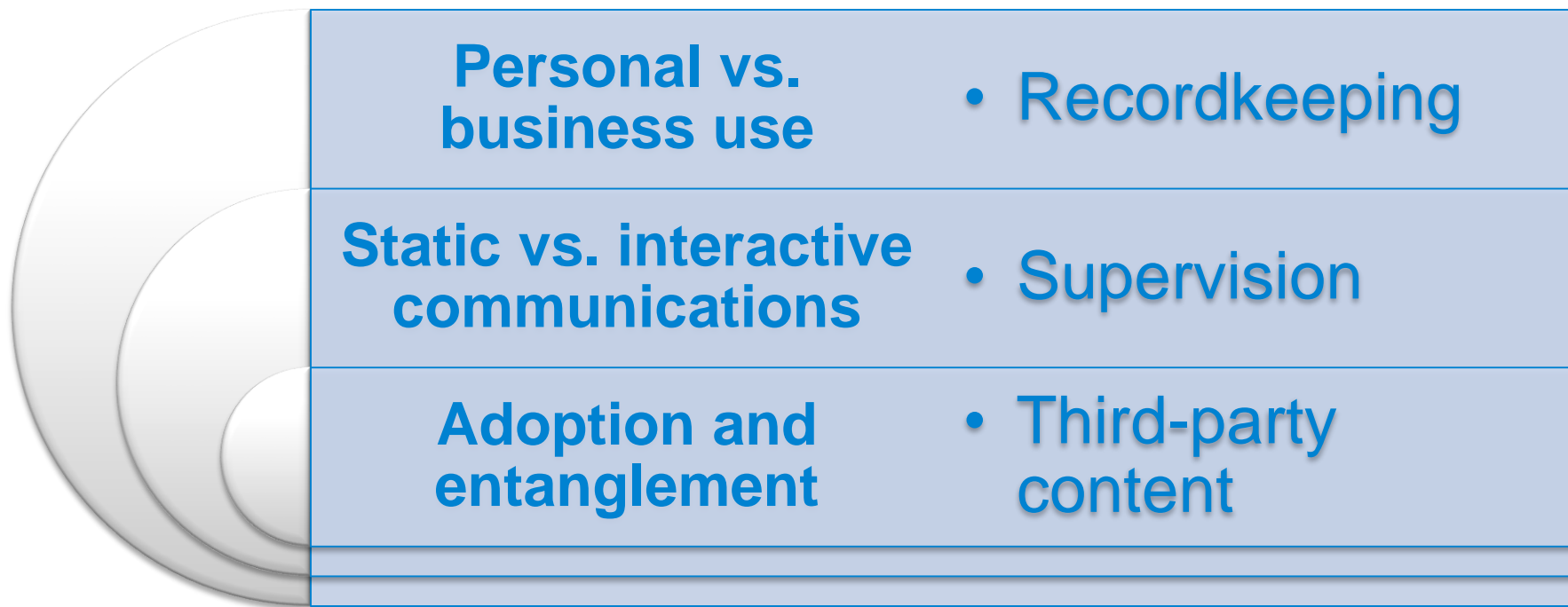
Investment Analysis Tools – Overview

- **Subject to FINRA Rule 2214.**
- **Definition:**
 - **Interactive;**
 - **Produces simulations and statistical analyses; and**
 - **Presents the likelihood of various investment outcomes if certain investments or strategies are undertaken.**
- **Template of report is not a required filing. However, access to the tool must be provided at FINRA's request.**

Investment Analysis Tools – Required Disclosures

- **Investment Analysis Tool retail communications (except incidental references) must include required disclosures:**
 - Describe the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;
 - Explain that results may vary with each use and over time;
 - If applicable, describe the universe of investments considered, how the investments are selected, explain if and why some securities are favored, and state that other investments may be similar or superior to those being analyzed; and,
 - **“IMPORTANT: The projections or other information generated by (name of investment analysis tool) regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.”**
- **These disclosures required by FINRA Rule 2214(c), should be clear, prominent, and written in narrative form.**

Social Media: Core Concepts



Social Media: FINRA Regulatory Notices

10-06: Guidance on Blogs and Social Networking Websites (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

Important Take-Aways

- Understand what rules and standards apply to the specific product being promoted.
- Ensure your communications are fair and balanced.
- Don't omit material information.
- Accompany non-standardized performance with standardized performance.
- Be mindful of the proximity requirement for performance disclosure.
- Clearly identify a variable product as either an annuity or life insurance.
- Remember that the VA performance inception date is based on the separate account.
- Prior approval from FINRA is required for options retail communications not used with the ODD.
- Understand your firm's responsibility with respect to social media and digital communications.

Advertising Compliance Boot Camp: Selected Topics

Questions and Answers