



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Private Placements, Digital Assets and Alternative Investments

Thursday, October 24, 2019

11:30 a.m. – 12:30 p.m.

This session focusses on industry and regulatory developments related to private placements, digital assets and alternative investments. During the session, panelists discuss common concerns and recent regulatory findings. Speakers provide practical information and compliance tips for firms offering these products to retail and institutional investors.

Moderator: Ira Gluck
Associate Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Kavita Jain
Director
FINRA Office of Financial Innovation (OFI)

Rebecca Knutson
Senior Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Minh Le
Director, Private Placements
FINRA Corporate Financing

Private Placements, Digital Assets and Alternative Investments Panelist Bios:

Moderator:

Ira Gluck is Associate Director in FINRA's Advertising Regulation Department. In this role, he works on policy issues and matters involving complex products and novel regulatory concerns. Mr. Gluck's previous positions within FINRA included leading the Emerging Regulatory Issues team within the Risk and Strategy Department, as well as heading the Strategic Initiatives Group in FINRA's Enforcement Department. He also served in various investigative and management roles in the Enforcement and Member Regulation Departments of NASD before its 2007 consolidation with NYSE Member Regulation, which resulted in the formation of FINRA. Mr. Gluck received his bachelor's degree from the University of Pennsylvania and completed both a master's degree and M.B.A. at the University of California, Irvine.

Speakers:

Kavita Jain is Director in FINRA's Office of Financial Innovation. In this role, she assists the Office in identifying and analyzing significant innovation-related developments in the securities industry and coordinating with various stakeholders to develop appropriate strategic responses. She leads several FinTech initiatives at FINRA including those related to blockchain technology, artificial intelligence, RegTech and online capital-raising platforms. During her tenure at FINRA (previously NASD), Ms. Jain has served in key positions in the Offices of Emerging Regulatory Issues, Finance and Strategic Planning. Ms. Jain was named as one of the leading women in FinTech by *Innovate Finance* and was included in the "Women In FinTech Powerlist 2018." She has an M.B.A. from the University of Southern New Hampshire and a CRCP™ Certification from the FINRA Institute at Wharton.

Rebecca Knutson is a senior principal analyst in FINRA's Advertising Regulation Department. She has been with the department for over 20 years, as a member of the department's investigative and sweep groups. In her current role, she also focuses on projects involving complex investment products and areas of emerging regulatory concern. She came to NASD/FINRA in 1998 from Johnston, Lemon & Co. Incorporated, where she spent a dozen years as a registered representative and was a member of the firm's municipal trading desk. She is a CPA, and has an MBA from Johns Hopkins University, specializing in information systems management.

Minh Q. Le is Director in FINRA's Corporate Financing Department. He has more than 20 years of experience in the regulation of public and private offerings. Currently, Mr. Le manages the Department's Private Placement Review program which provides regulatory oversight of broker-dealer participation in retail private offerings. In addition to overseeing the review and investigation program, Mr. Le's duties include developing policy and providing guidance on corporate financing and other capital-raising related issues. Mr. Le also routinely provides subject matter expertise to FINRA's Examination and Enforcement staffs. Building on this experience, Mr. Le has served as a member on each of FINRA's Regulatory Specialist committees for Public Offerings, Private Placements, and Non-traded Direct Participation Programs (DPP) and Real Estate Investment Trusts (REIT), and was a member of FINRA's Risk Assessment Committee. For the past 18 years, he has been a member of FINRA's Sales Rep and DPP/REIT Qualifications Committees. Prior to his involvement in developing FINRA's private placement rules and the filing program, Mr. Le managed the Department's Public Offerings Review program, which is responsible for regulating underwriting terms and arrangements in public offerings. He also handled interpretive and exemption requests made to the Department. Mr. Le graduated from the University of Maryland, attended the University of Pennsylvania's Wharton Institute of Executive Education, and is a Certified Regulatory and Compliance Professional™.



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Director
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Rebecca Knutson
Senior Principal Analyst
FINRA Advertising Regulation

Minh Le
Director
FINRA Private Placements

- I. Introduction
- II. Private Placement / Alternative Investment Developments and Findings
 - a) Due Diligence
 - b) Private Securities Transactions
 - c) Conservation Easements
 - d) Qualified Opportunity Zone Funds
 - e) Exam Findings
- III. Private Placements and Rule 2210 Compliance
 - a) Advertising Regulation Department Reviews
 - b) Disclosure Requirements
 - c) Common Concerns
 - d) Compliance Tips
- IV. Digital Assets
 - a) Digital Asset Primer
 - b) SEC and FINRA Joint Statement

- c) BD (Broker-Dealer) involvement in digital assets
 - d) Securities Products
 - e) Exam Findings
- V. Digital Assets and Rule 2210 Compliance
 - a) Digital Asset Disclosures
 - b) Types of Communications
 - c) Other Products
 - d) Common Concerns
 - e) Compliance Tips
- VI. Wrap-up and Questions



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Panelists

■ Moderator

- **Ira Gluck, Associate Director, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Kavita Jain, Director, FINRA Office of Financial Innovation (OFI)**
- **Rebecca Knutson, Senior Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**
- **Minh Le, Director, Private Placements, FINRA Corporate Financing**

Private Placements and Other Unregistered Alternative Investment Products

■ Broker-dealer Due Diligence Obligations

- Regulatory Notice 10-22
- FINRA Rules 5122 and 5123

■ Contingency Arrangements

- Handling of Investor Funds
- Duty of Rescission

■ Current Product Trends

- Conservation Easements
- Qualified Opportunity Zone Funds

Private Placements and Other Unregistered Alternative Investment Products

■ Alternative Investments

- Solar and Tax Credits
- Forward Contracts

■ Exam and Enforcement Findings

- Exam Exceptions and other Notable Areas of Non-Compliance
- Recap of FINRA AWCs

■ Effective Practices

- Supervision and Oversight
- Communications

Private Placements and Advertising Compliance

■ Advertising Regulation Department Reviews

■ Disclosure Requirements

- General and Issuer Specific Risks

■ Common Concerns

- Inadequate Balancing Language
- Projections of Investment Performance
- Unwarranted or False Statements
- Exaggerated References to Regulation

Private Placements and Advertising Compliance

■ Compliance Tips

- Reasonable Issuer Forecasts
- Internal Rate of Return
- Platforms and Data Rooms

Digital Assets

■ Basics – Blockchain Technology and Digital Assets

■ Regulatory Guidance

- SEC 21(a) Report of Investigation – The DAO (July 2017)
www.sec.gov/litigation/investreport/34-81207.pdf
- SEC-FINRA Joint Statement on Broker-Dealer Custody of Digital Asset Securities (July 2018)
www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities
- FINRA Report on Distributed Ledger Technology (Jan. 2017)
www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf
- FINRA Regulatory Notice 19-24 (July 2019)
www.finra.org/rules-guidance/notices/19-24

■ Broker-Dealer Involvement

■ Related Product Offerings

Digital Assets and Advertising Compliance

- **Digital Asset Disclosures**
- **Types of Communications**
- **Other Products**
- **Common Concerns**
 - **Promissory or Misleading language**
 - **Inaccurate Characterization of the Security**
 - **Implication that Past Success is Indicative of Future Performance**
 - **Unwarranted or False References to Regulation**

Digital Assets and Advertising Compliance

■ Compliance Tips

- **Balanced Presentations**
- **Clear and Accurate Explanations**
- **Potential for Loss**
- **Be Audience Appropriate**

Funding Portal Issues

- **Exceeding the Safe Harbor**
- **Communications Involving Terms of the Offering**
- **Templates for Issuers**
- **Prominence of Disclosure**

Questions





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Resources

FINRA Regulatory Notices

- FINRA Regulatory Notice 19-24, *Digital Assets, FINRA Encourages Firms to Notify FINRA if they Engage in Activities Related to Digital Assets* (July 2019)
www.finra.org/sites/default/files/2019-07/Regulatory-Notice-19-24.pdf
- FINRA Regulatory Notice 18-20, *Digital Assets, FINRA Encourages Firms to Notify FINRA if They Engage in Activities Related to Digital Assets* (July 2018)
www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-20.pdf
- FINRA Regulatory Notice 17-17, *Updated Private Placement Filer Form, Update to Private Placement Filer Form Pursuant to FINRA Rules 5122 and 5123* (April 2017)
www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-17.pdf
- FINRA Regulatory Notice 16-08, *Contingency Offerings, Private Placements and Public Offerings Subject to a Contingency* (February 2016)
www.finra.org/sites/default/files/Regulatory-Notice-16-08.pdf
- FINRA Regulatory Notice 16-06, *Jumpstart Our Business Startups (JOBS) Act, SEC Approval of FINRA Funding Portal Rules and Related Forms* (January 2016)
www.finra.org/sites/default/files/Regulatory-Notice-16-06.pdf
- FINRA Regulatory Notice 13-26, *Private Placements of Securities, FINRA Updates Form for Filing Private Placements of Securities Pursuant to FINRA Rules 5122 and 5123* (April 2013)
www.finra.org/sites/default/files/NoticeDocument/p325359.pdf
- FINRA Regulatory Notice 12-40, *Private Placements of Securities, SEC Approves New FINRA Rule 5123 Regarding Private Placements of Securities* (September 2012)
www.finra.org/sites/default/files/NoticeDocument/p163707.pdf
- FINRA Regulatory Notice 10-22, *Regulation D Offerings, Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings* (April 2010)
www.finra.org/sites/default/files/NoticeDocument/p121304.pdf

- FINRA Regulatory Notice 09-27, *Member Private Offerings, SEC Approves New FINRA Rule 5122 Relating to Private Placements of Securities Issued by a Member Firm or a Control Entity* (June 2009)

www.finra.org/sites/default/files/NoticeDocument/p118735.pdf

News Releases

- Joint Statement on Broker-Dealer Custody of Digital Asset Securities (July 2019)

www.finra.org/media-center/news-releases/2019/joint-statement-broker-dealer-custody-digital-asset-securities

FINRA Reports

- Distributed Ledger Technology: Implications of Blockchain for the Securities Industry (January 2017)

www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf

Securities and Exchange Commission Reports

- Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO (July 2017)

www.sec.gov/litigation/investreport/34-81207.pdf

FINRA Frequently Asked Questions

- Private Placement Frequently Asked Questions (FAQ) (April 2013)

www.finra.org/rules-guidance/guidance/faqs/private-placement-frequently-asked-questions-faq

FINRA Investor Education

- Initial Coin Offerings and Cryptocurrencies Webpage

www.finra.org/investors/learn-to-invest/types-investments/initial-coin-offerings-and-cryptocurrencies

- Brokerage Firm Private Securities Offerings: Buying Your Brokerage (June 2004)

www.finra.org/investors/alerts/brokerage-firm-private-securities-offerings-buying-your-brokerage

- Pre-IPO Offerings—These Scammers Are Not Your Friends

www.finra.org/investors/alerts/pre-ipo-offerings-these-scammers-are-not-your-friends

- Private Placements—Evaluate the Risks before Placing Them in Your Portfolio (September 2013)

www.finra.org/investors/alerts/private-placements-evaluate-risks-placing-them-your-portfolio

- Bitcoin: More than a Bit Risky (May 2014)

www.finra.org/investors/alerts/bitcoin-more-bit-risky

- Initial Coin Offerings: Know Before You Invest (August 2017)
www.finra.org/investors/alerts/initial-coin-offerings-know-you-invest
- Don't Fall for Cryptocurrency-Related Stock Scams (December 2017)
www.finra.org/investors/alerts/cryptocurrency-related-stock-scams
- Initial Coin Offerings (ICOs)—What to Know Now and Time-Tested Tips for Investors (August 2018)
www.finra.org/investors/alerts/icos-what-know-now

FINRA Corporate Financing Private Placement Guidance

- Reference guide for firms and market participants on conducting and filing private placements.
www.finra.org/rules-guidance/key-topics/private-placements/filing-guidance