



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Plenary Session II – Regulation Best Interest and Current Developments

Thursday, October 24, 2019

10:05 a.m. – 11:15 a.m.

Join FINRA staff for an in-depth discussion on Regulation Best Interest and current advertising compliance issues. Topics include the impact of the FAIR Act, the status of FINRA's rule proposal related to the use of projections, and considerations in advertising bank sweep products and digital assets.

Moderator: Joseph Savage
Vice President and Counsel
FINRA Office of Regulatory Analysis

Speakers: Meredith Cordisco
Associate General Counsel
FINRA Office of General Counsel

Thomas Pappas
Vice President, Advertising Regulation
FINRA Advertising Regulation

Joseph Price
Senior Vice President
FINRA Corporate Financing/Advertising Regulation

Regulation Best Interest and Current Developments Panelist Bios:

Moderator:

Joseph P. Savage is Vice President and Counsel in FINRA's Office of Regulatory Analysis. Mr. Savage specializes in a broad range of securities regulatory matters, including investment management, investment company, advertising and broker-dealer issues, and regularly appears at conferences regarding these issues. Prior to joining FINRA, he was an Associate Counsel with the Investment Company Institute and an attorney with the law firms of Morrison & Foerster LLP and Hunton & Williams. Mr. Savage also served as a judicial law clerk for United States District Judge John P. Vukasin of the Northern District of California. Mr. Savage holds a bachelor's degree from the University of Virginia, a master's degree in public policy from the University of California, Berkeley, and a J.D. from the University of California, Hastings College of the Law, where he served as Note Editor of the *Hastings Law Journal*.

Speakers:

Meredith Cordisco is Associate General Counsel with FINRA's Office of General Counsel. In this capacity, she provides legal guidance on policy initiatives, rule changes and interpretations in various areas, including regarding new issues and spinning, private securities transactions and outside business activities. Before joining FINRA, Ms. Cordisco was counsel in the Securities Litigation and Enforcement group at WilmerHale, where she focused her practice on complex securities enforcement investigations. Ms. Cordisco received her B.S., *summa cum laude*, in International Business and French from Mount St. Mary's University in Emmitsburg, Maryland, and her J.D., *summa cum laude*, and M.B.A., *cum laude*, from Villanova University. Following her studies, Ms. Cordisco clerked for the Honorable Eduardo C. Robreno on the U.S. District Court for the Eastern District of Pennsylvania.

Thomas A. Pappas is Vice President of the FINRA Advertising Regulation Department, which regulates the advertisements, sales literature and correspondence used by FINRA member firms. His responsibilities include rule development, management of the filing and surveillance programs and related enforcement activities. He served in the same role at NASD before its 2007 consolidation with NYSE Member Regulation, which resulted in the formation of FINRA. He was previously registered with Davenport & Company LLC. He received a bachelor's degree from The University of Richmond and an MBA from Virginia Commonwealth University.

Joseph E. Price is Senior Vice President, Corporate Financing/Advertising Regulation, at the Financial Industry Regulatory Authority. The FINRA Corporate Financing Department regulates capital-raising activities of broker/dealers; including equity, debt, REIT, closed-end fund, limited partnership offerings and private placements. The FINRA Advertising Regulation Department regulates broker/dealer sales materials, mutual fund advertisements, social media and other communications with the public. Mr. Price previously worked in various capacities at the Securities and Exchange Commission. He was an Assistant General Counsel and a Special Counsel in the Office of General Counsel and he was the Deputy Chief of the Office of Disclosure and Investment Adviser Regulation in the Division of Investment Management. Prior to working at the SEC, he was a litigator in the Bureau of Competition at the Federal Trade Commission. Mr. Price also worked as a Compliance Investigator at the Coffee, Sugar & Cocoa Exchange. He was an Adjunct Professor at Georgetown University Law Center from 1994 to 2002, where he taught "Current Issues in Securities Regulation" and "Disclosure under the Federal Securities Laws." He graduated with distinction in economics from the University of Wisconsin and received his J.D. from Fordham University.



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Join FINRA staff for a discussion of recent rule changes made in response to the FAIR Act, recent regulatory issues raised by communications about digital assets and customer transaction accounts, a summary of Regulation Best Interest, and advertising issues that Reg BI raises.

Moderator: Joseph P. Savage (Moderator)
Vice President and Counsel
FINRA Office of Regulatory Analysis

Panelists: Meredith P. Cordisco
Associate General Counsel, Regulatory
FINRA Office of General Counsel

Thomas A. Pappas
Vice President
FINRA Advertising Regulation Department

Joseph E. Price
Senior Vice President
FINRA Advertising Regulation/Corporate Financing

- I. Introduction to Panel
- II. FINRA Rule Amendments
 - a) FAIR Act Rule Changes
 - b) Proposed Changes to Rules Governing Projections (5 minutes)
- III. Recent Guidance and Current Issues
 - a) Pre-Inception Index Performance
 - b) Frequently Asked Questions on Focus Groups
 - c) Digital Assets Communications
 - d) Advertisements Concerning Transaction Accounts
- IV. Regulation Best Interest
 - a) Overview of Reg BI (15 minutes)
 - b) Advertising Issues Raised by Reg BI (8 minutes)
 - c) SEC (Securities and Exchange Commission) and FINRA Resources on Reg BI (2 minutes)
- V. Questions and Answers



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Panelists

■ Moderator

- **Joseph Savage, Vice President and Counsel, FINRA Office of Regulatory Analysis**

■ Panelists

- **Meredith Cordisco, Associate General Counsel, FINRA Office of General Counsel**
- **Thomas Pappas, Vice President, Advertising Regulation, FINRA Advertising Regulation**
- **Joseph Price, Senior Vice President, FINRA Corporate Financing/Advertising Regulation**

Fair Access to Investment Research Act of 2017

■ FAIR Act

- Covered Investment Fund Research Reports

■ SEC Rules

- Securities Act Rule 139b
- Investment Company Act Rule 24b-4

■ FINRA Rule Changes

- Equity Research Rules
- Advertising Filing Exclusion

Proposed Changes to Rules Governing Projections

■ Regulatory Notice 17-06

- **Current Projections Rule**
- **Proposal**
 - Customized Hypothetical Investment Planning Illustrations
 - Asset Allocation or Other Investment Strategy
 - Other Requirements
- **Comments on Proposal**
- **Next Steps**

Pre-Inception Index Performance

■ What is PIP Data?

■ ALPS Distributors, Inc. Letter

■ Foreside Fund Services, LLC Letter

- Extended ALPS Interpretation to Mutual Funds Communications
- Institutional Communications Only
- Conditions

Frequently Asked Questions on Focus Groups

■ Usability Study and Focus Group Communications

- Recruiting Communications
- Feedback Communications

Digital Asset Communications

- What are Digital Assets?
- SEC/FINRA Joint Statement on Broker-Dealer Custody of Digital Asset Securities
- Non-Securities Digital Assets and Digital Asset Securities
- Communications About Digital Assets
- Application of Rule 2010 and 2210

Advertisements Concerning Transaction Accounts

- **Broker-Dealers Offering Bank-Like Services**
- **Bank Sweeps, Checking and Debit Card Features**
- **Higher-Than-Average Interest Rates**
- **FDIC and SIPC Insurance Coverage**

Regulation Best Interest

- **Best Interest Obligation**
- **Securities Recommendations to Retail Customers**
- **Components of Reg BI**
 - **Disclosure Obligation**
 - **Care Obligation**
 - **Conflict of Interest Obligation**
 - **Compliance Obligation**

Regulation Best Interest

■ Disclosure Obligation

- Timing of Disclosure
- Full and Fair Disclosure of All Material Facts Relating to Scope and Terms of Relationship
- All Material Facts Relating to Conflicts of Interest Associated with a Recommendation

Regulation Best Interest

■ Care Obligation

- Reasonable Diligence, Care and Skill in Satisfying Obligations
- Reasonable-Basis Obligation
- Customer-Specific Obligation
- Quantitative Obligation

Regulation Best Interest

■ Conflicts of Interest Obligation

- Written Policies and Procedures
- Conflicts Associated with Recommendations
- Conflicts Associated with Financial Professional Incentives
- Conflicts Associated with Material Limitations on Offerings
- Sales Contests, Quotas, Bonuses and Non-Cash Compensation

Regulation Best Interest

■ Compliance Obligation

- Requirement to Establish, Maintain and Enforce Written Policies and Procedures Reasonably Designed to Achieve Compliance with Reg BI

Form Customer Relationship Summary (CRS)

■ Delivery Requirements

■ Five Items:

- Introduction
- Relationship and Services
- Fees, Costs, Conflicts and Standard of Conduct
- Disciplinary History
- Additional Information

Investment Advisers Act Interpretations

■ Investment Adviser Standard of Conduct

- Duty of Care
- Duty of Loyalty

■ “Solely Incidental” Interpretation

- Broker-Dealer Exclusion from Investment Adviser Definition
- Exercise of Investment Discretion
- Account Monitoring

Advertising Issues Raised by Reg BI

- **Use of “Adviser” or “Advisor” in Communications, Firm Name, or Rep Title**
- **Dually Registered Firm or Rep Capacity**
- **Consistency of Marketing Communications with Reg BI and Form CRS Disclosures**

FINRA's Role in Reg BI

- **Examination**
- **Enforcement**
- **Consistency of FINRA Rules with Reg BI**
- **SEC Interprets Reg BI and Form CRS**
 - **SEC Email Box for Reg BI Questions**

SEC and FINRA Resources

■ SEC

- Rule Releases, Form CRS Instructions
- Small Firm Compliance Guide
- FAQs

■ FINRA

- FINRA.org Webpage
- FINRA Reg BI Conference (December 18, 2019)
- Other Events and Programs

Questions & Answers





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Resources

FAIR Act Rule Changes

- SEC Securities Act Release No. 10580 (Covered Investment Fund Research Reports) (November 30, 2018), 83 FR 64180 (December 13, 2018)
www.sec.gov/rules/final/2018/33-10580.pdf
- FINRA Regulatory Notice 19-32, *Investment Fund Research Reports, FINRA Amends Rules 2210 and 2241 to Conform to the Fair Access to Investment Research Act of 2017* (September 26, 2019)
www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-32.pdf

Proposed Changes to Rules Governing Projections

- FINRA Regulatory Notice 17-06, *FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public* (February 2017)
www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf

Pre-Inception Index Performance

- Interpretive Letter to Meredith F. Henning, Foreside (January 31, 2019)
www.finra.org/rules-guidance/guidance/interpretive-letters/interpretive-letter-meredith-f-henning-foreside

Frequently Asked Questions on Focus Groups

- Frequently Asked Questions About Advertising Regulation, Questions D.4.1 and D.4.2.
www.finra.org/rules-guidance/guidance/faqs/advertising-regulation#d4

Regulation Best Interest

- SEC Exchange Act Release No. 86031 (Regulation Best interest: The Broker-Dealer Standard of Conduct) (June 5, 2019), 84 FR 33318 (July 12, 2019)
www.sec.gov/rules/final/2019/34-86031.pdf

- SEC Exchange Act Release No. 86032 (Form CRS Relationship Summary) (June 5, 2019), 84 FR 33492 (July 12, 2019)
www.sec.gov/rules/final/2019/34-86032.pdf
- SEC Advisers Act Release No. 5248 (Commission Interpretation Regarding Standard of Conduct for Investment Advisers) (June 5, 2019), 84 FR 33669 (July 12, 2019)
www.sec.gov/rules/interp/2019/ia-5248.pdf
- SEC Advisers Act Release No. 5249 (Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser) (June 5, 2019), 84 FR 33681 (July 12, 2019)
www.sec.gov/rules/interp/2019/ia-5249.pdf
- SEC Regulation Best interest Small Entity Compliance Guide
www.sec.gov/info/smallbus/secg/regulation-best-interest#.edn1
- FINRA Key Topics Webpage on SEC Regulation Best Interest (Reg BI)
www.finra.org/rules-guidance/key-topics/regulation-best-interest