



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Plenary Session I – Welcome Remarks

Thursday, October 24, 2019

10:00 a.m. – 10:05 a.m.

Speaker: Thomas Pappas
Vice President, Advertising Regulation
FINRA Advertising Regulation

Speaker Biography:

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.



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Plenary Session I – Welcome Remarks

Speaker

■ Speaker

- **Thomas Pappas, Vice President, Advertising Regulation, FINRA Advertising Regulation**



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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Plenary Session II – Regulation Best Interest and Current Developments

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10:05 a.m. – 11:15 a.m.

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



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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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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 while offering tips on how to submit communications for review to the Advertising Regulation Department.

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

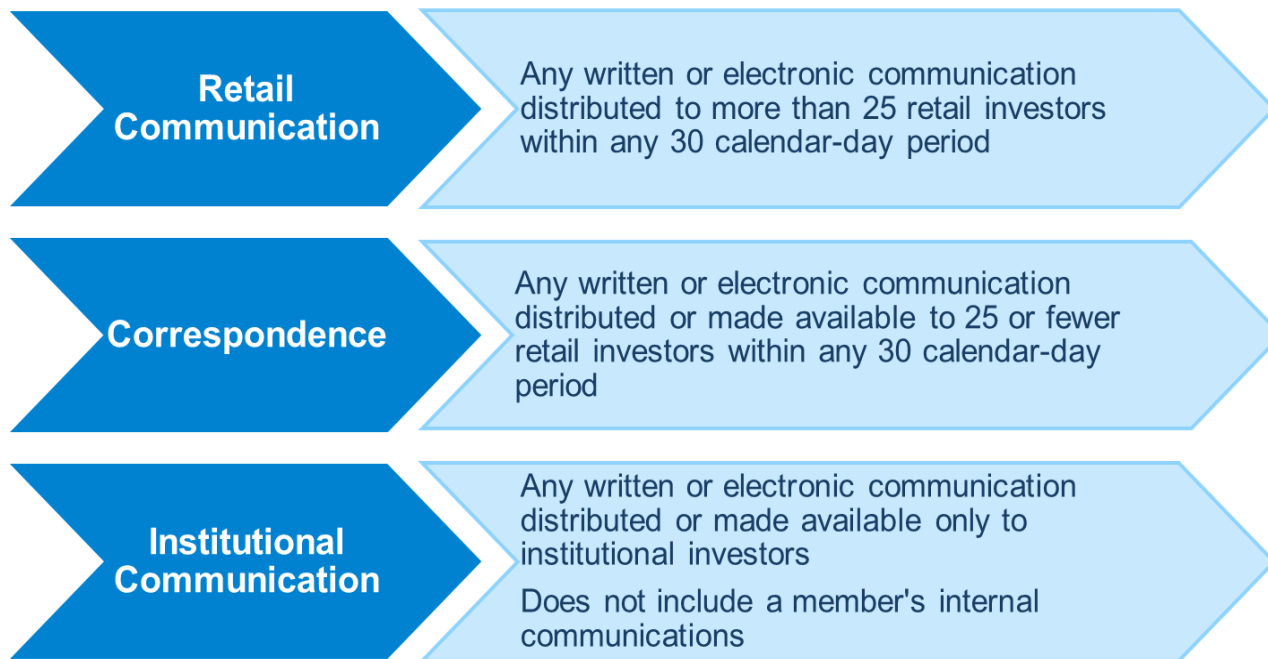
- Advertising filings review program
- Complex reviews
- Sweeps
- Member outreach and education

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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Resources

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



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Investment Company Topics

Thursday, October 24, 2019

11:30 a.m. – 12:30 p.m.

Join FINRA staff and industry panelists as they discuss advertising compliance issues concerning registered investment companies, including mutual funds, ETFs and closed-end funds. The panel includes discussions on current topics and trends, including innovative products, regulatory interpretations and compliance tips.

Moderator: Gregory Riviello
Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Meredith Henning
Managing Director, Advertising Compliance
Foreside

JoDee Murphy
Assistant Vice President, Compliance Manager
ALPS Fund Services, Inc.

Richard Vagnoni
Senior Economist, Office of Financial Innovation
FINRA Office of Financial Innovation (OFI)

Investment Company Topics 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.

Speakers:

Meredith Henning, Managing Director of Advertising Compliance, joined Foreside in 2005. She oversees the advertising compliance function for open- and closed-end funds, exchange-traded products, commodity pools and private placements. Prior to joining Foreside, she was a manager of client services for a Chicago based mutual fund company and also served as a manager of investor services for an online brokerage firm. She holds FINRA series 7, 24, 63 and 79 registrations.

JoDee B. Murphy, Assistant Vice President and Compliance Manager, has more than 18 years of financial services industry experience, including 16 years focused on the review of marketing collateral. Ms. Murphy graduated from the University of Colorado with a B.A. in Psychology. She has obtained the S6, S26 and S99 registrations and in her current role at ALPS she oversees the advertising department and is responsible for the review and approval of all mutual funds and exchange traded funds' marketing collateral.

Richard Vagnoni is Senior Economist in FINRA's Office of Emerging Regulatory Issues in Washington, DC. Mr. Vagnoni provides economic analysis support, studies relevant academic and industry research, and monitors and analyzes new and innovative products, including exchange-traded products and structured retail products. Mr. Vagnoni has a B.A. from the Johns Hopkins University and a Ph.D. from the University of California, Santa Barbara, both in economics.



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Investment Company Topics

Thursday, October 24, 2019

11:30 a.m. – 12:30 p.m.

Join FINRA staff and industry panelists as they discuss advertising compliance issues concerning registered investment companies, including mutual funds, ETFs and closed-end funds. The panel includes discussions on current topics and trends, including innovative products, regulatory interpretations and compliance tips.

Moderator: Gregory Riviello
Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Meredith Henning
Managing Director, Advertising Compliance
Foreside

JoDee Murphy
Assistant Vice President, Compliance Manager
ALPS Fund Services, Inc.

Richard Vagnoni
Senior Economist, Office of Financial Innovation
FINRA Office of Financial Innovation (OFI)

- I. Introduction
- II. ESG Funds
 - a) What are they?
 - b) Regulatory issues
- III. Interval Funds
 - a) What are they?
 - b) Regulatory issues
- IV. Defined Outcome Registered Investment Company Products
 - a) What are they?
 - b) Regulatory issues
- V. Pre-Inception Performance
 - a) FINRA pre-inception index performance interpretive guidance
 - b) Use with institutional clients
- VI. Industry and FINRA Collaboration
- VII. Wrap-up



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Investment Company Topics

Panelists

■ Moderator

- **Gregory Riviello, Director, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Meredith Henning, Managing Director, Advertising Compliance, Foreside**
- **JoDee Murphy, Assistant Vice President, Compliance Manager, ALPS Fund Services, Inc.**
- **Richard Vagnoni, Senior Economist, Office of Financial Innovation, FINRA Office of Financial Innovation (OFI)**

To Access Polling

- Under the “Schedule” icon on the home screen,
- Select the day,
- Choose the Investment Company Topics session,
- Click on the polling icon:



ESG Investing

■ Environmental, Social, and Governance (ESG) investing

- Also referred to as Socially-Responsible Investing (SRI)
- **Environmental:** climate change, clean technology, pollution abatement, and water conservation
- **Social:** gender and diversity policies, workplace safety, human rights, labor standards, and employee relations
- **Governance:** executive compensation, board diversity, political contributions, anti-bribery and corruption policies
- Objective is to generate competitive financial returns while creating a positive impact on society

Polling Question 1 – ESG Investing

- 1. Does your firm currently distribute or plan to distribute within the next 12 months, ESG registered investment company securities i.e., mutual funds, ETFs UITs closed-end funds?**
 - a. Yes**
 - b. No**

ESG Investing

- Significant market growth (2018 estimate of \$12 trillion)
- Mutual funds, ETPs, “green” bonds, and others
- Institutional investors, but increasingly retail
- Performance?
- Risks and concerns
 - Lack of consistency in ESG criteria
 - Lack of transparency in ESG methodologies
 - Potentially misleading marketing and communications
 - Potentially limited diversification

ESG Investing

- Many investors find environmental, social and governance factors important when choosing an investment.
- Many fund companies have different approaches to the screening for these types of investments.
- Not one size fits all. It is important for the investor to understand “doing well by doing good” still involves risk.
- While ESG investing may have many benefits, it does not mean the investments will perform better.

ESG Investing

- **Materials should always disclose the primary risks as identified in the prospectus.**
- **Depending on the focus of the material, risk information may need to be embedded within the main body of the text to balance the language.**
- **Compliance staff should review specifically on the ESG strategy being promoted. There is not a one size fits all disclosure as there are many worthwhile causes to support and they all do not have the same level of risk.**

ESG Investing

- **ESG metrics are not reported equally, therefore it is on the investor or the adviser to understand the issues of each individual product. This translates the same for the compliance staff.**
- **The compliance staff needs to be trained properly to review the product.**

Interval Funds

- Interval funds are a type of closed-end fund.
- They are often marketed as high-yielding investments with returns that are less volatile than the broader stock market.
- Interval funds also offer retail investors access to alternative investment strategies and illiquid assets such as catastrophe bonds, private company stock, real estate and peer-to-peer loans, among others.
- Interval funds offer to repurchase their shares from shareholders at periodic and predetermined intervals, generally three, six or 12 months.

Interval Funds

■ Limited Redemption Opportunities

- Interval funds typically price daily at net asset value (NAV), however, redemptions are limited.
- Rather than trade in the secondary market, they periodically offer to repurchase a percentage of outstanding shares from investors on a pro-rata basis.
- There is no guarantee a shareholder can redeem the desired number of shares during the redemption period, making them generally illiquid.

Interval Funds

■ NSCC/AIP

- Interval funds can either be offered through the National Securities Clearing Corporation (“NSCC”) or Alternative Investment Product (“AIP”) Services.
- NSCC is typically used by traditional mutual funds to provide clearing, settlement, risk management, and information services to the financial industry.
- AIP standardizes the way global market participants communicate information concerning alternative investments, removing the manual operational challenges that can be associated with these types of products.

Interval Funds

■ Onboarding Requirements

- **Intermediary platforms that offer interval funds alongside traditional open-end mutual funds tend to have stricter onboarding requirements for alternative funds.**
- **They may require significant investor demand, a more extensive due diligence review, and potentially charge higher fees due to the operational restrictions associated with supporting these products.**
- **It is essential to keep in mind that not all intermediaries support this structure for onboarding and use by their advisor base.**

Interval Funds

■ Attraction of Interval Funds

- Since interval fund portfolio managers are not concerned with meeting daily redemption requests, they are able to invest in assets or implement investment strategies that may be less liquid and more suited to longer holding periods.
- They also have the ability to invest in alternative types of assets, all of which lend to the possibility for higher returns than open-end mutual funds.

Interval Funds

■ Education is Key

- **Factsheets on strategies are a baseline, but with a non-standard vehicle, developing content to educate advisors on the structure and operational complexity is critical.**
- **Intermediaries and advisors may require additional insight into the mechanics of the need for this vehicle, how it works, differences, benefits, and risks.**
- **Also, continued advocacy with industry groups such as the Broker-Dealer Advisory Committee (“BDAC”) at ICI to innovate around improving and automating operational complexities is necessary.**

Interval Funds

■ Disclosure Tips

- **Must be labeled appropriately as an interval closed end fund. This language should be prominent and clearly labeled.**
- **If your Form N2 or prospectus states the interval closed end fund is non-diversified this must also be clearly labeled.**
- **Specific key risks must be adequately explained.**
- **Key risks must be shown prominently and not placed in a footnote.**
- **If the concept of liquidity is mentioned in an advertisement the limited liquidity disclosure should be more prominent than other fund risk disclosures.**

Interval Funds

■ Key risks might include the following:

- The Fund should be considered a speculative, long-term investment of limited liquidity that entails substantial risks, and prospective investors should invest in the Fund only if they can sustain a complete loss of their investments.
- Investing in the Fund involves risks, including the risk that a shareholder may receive little or no return on their investment or that a shareholder may lose part or all of its investment.

Interval Funds

■ Key risks might include the following:

- Shares of the fund will not be listed on any securities exchange, which makes them inherently illiquid. An investment in the fund's shares is not suitable for investors who cannot tolerate risk of loss or who require liquidity, other than liquidity provided through the fund's repurchase policy. The Fund is suitable only for investors who can bear the risks associated with the Fund's limited liquidity and should be viewed as a long-term investment.
- The Fund may pay distributions in significant part from sources that may not be available in the future and that are unrelated to the Fund's performance, such as a return of capital, borrowings or expense reimbursements and waivers. (Once the fund has paid distributions from non-income sources this needs to be disclosed.)

Interval Funds

■ Key risks might include the following:

- Liquidity for the Shares will be provided only through quarterly repurchase offers between 5% and 25% of the Shares at NAV, and there is no guarantee that an investor will be able to sell all the Shares that the investor desires to sell in the repurchase offer. Due to these restrictions, an investor should consider an investment in the Fund to be of limited liquidity.

Interval Funds

■ Disclosure Tips When Marketing Interval Funds (refer to document in resource section)

- SEC Rule 482
- Fees and costs
- References to liquidity
- Distributions and return of capital

Defined Outcome Investments

- **Defined outcome investing: New terminology for payoffs historically found in structured retail products**
 - Example: Limit potential losses in exchange for limiting gains
 - Often reflect embedded optionality
 - Generally considered to be “complex”
- **Various efforts to expand availability of these payoffs**
 - Annuities, closed-end funds, mutual funds, UITs, and ETFs
 - Targeting wider retail investor audience
 - Addressing common historical criticisms of structured notes
 - Opacity, relatively high costs, illiquidity, and counterparty credit risk

Defined Outcome Investments

■ ETF example

- **Provide a “defined outcome” at the end of a one-year period**
 - Exposure to gains in the S&P 500, up to a cap (e.g., 10%)
 - Protection against index losses (e.g., the first 15% of losses)
 - If investor buys at launch and holds to the end of the one-year period
 - Index loses 20%: investor loses 5%
 - Index loses up to 15%: investor return is 0%
 - Index gains 5%: investor return is 5%
 - Index gains 10% or more: investor return is 10%
- **Exposure is re-set at the end of the one-year period**

Defined Outcome Investments

■ Concerns

- As the target audience for such products expands, the potential novelty and inherent complexity of the payoff structures as well as the variety of products in which they now appear may heighten the risk of mis-selling.
- Financial advisors and investors may not fully appreciate the trade-offs between the various risks and benefits offered by these products, such as the potential cost of downside protection.
- They also may not fully understand how structured payoffs should be used in a portfolio, how optionality embedded in the products can impact their ongoing valuation and performance, or how the different product structures may affect investing experience and outcomes.

Defined Outcome Investments

- **Reviewing sales material for these investments can be different due to the complexity of the product which is why education for the reviewers has become critically important.**
 - **Open lines of communication are key.**
 - **Working with the portfolio managers and/or investment strategists is helpful as they can communicate the concepts best.**
 - **Compliance teams or individuals approving sales materials need to learn the strategy mechanics and be able to provide concise comments to help in the production of compliant marketing material.**

Defined Outcome Investments

- **The material should not imply any level of protection, this triggers concerns from regulators.**
- **Clarifying language should be in the body of the material and not relegated to disclosures at the end of the material.**
- **Disclosures must be clear and easy to understand for the retail investor.**
- **Build in review time to provide appropriate feedback for the material. Set appropriate expectations and ask questions.**

Pre-Inception Index Performance

■ Interpretive letter to Meredith F. Henning, Foreside

- January 31, 2019
- A member firm may include pre-inception index performance data in institutional communications concerning registered open-end investment companies.

■ Interpretive letter to Bradley J. Swenson, ALPS Distributors, Inc.

- April 22, 2013
- A member firm may include pre-inception index performance data in institutional communications concerning exchange traded products.

Pre-Inception Index Performance

- **Must only be used with institutional clients.**
- **Firms find it useful in helping institutional clients make better investment decisions.**

Pre-Inception Index Performance

■ Key Guidance Tips:

- Pay close attention to #2 of the PIP guidance (Any PIP data would be used only with respect to an Index created according to a pre-defined set of rules that cannot be altered except under extraordinary market, political or macroeconomic conditions)
- If the methodology is changed and it is not due to extraordinary market, political or macroeconomic conditions you will not be able to use PIP going forward.

Pre-Inception Index Performance

■ Key Guidance Tips:

- When showing PIP data, it must be presented separately from actual performance.
- The presentation of PIP data will reflect the deduction of fees and charges applicable to the ETF (no exception)

Resources

■ FINRA Interpretive Letters

- Interpretive Letter to Meredith F. Henning, Foreside
- Interpretive Letter to Bradley J. Swenson, ALPS Distributors, Inc.

■ FINRA Investor Insights

- *Investor Tips: Interval Funds – 6 Things to Know Before You Invest*

Interval Funds

THINGS TO NOTE:

- SEC Rule 482 (b)(3) – applies to *open-end investment companies* which is the performance disclosure legend; however, an interval fund that is showing performance must be fair and balanced. At a minimum, the general past performance disclosure must be included (performance quoted represents past performance and does not guarantee future results).
- SEC Rule 482(d)(3) – average annual total returns (standardized performance) be based on computation prescribed in Form N-1A; however, if an interval closed-end fund does not show standardized performance then the periods shown for performance should be shown for short, medium and long periods so that the item is fair and balanced and not misleading by only showing one period of time.
- Must label fees appropriately. For example, Gross, Total, Total excluding certain fees, etc., must be named according to the prospectus fee table.
- If the interval fund offers different share classes which are subject to distribution fees and additional costs such as front-end, trailing and redemption fees, this material information must be disclosed.
- Be careful when referring to interval funds as being liquid. Because a repurchase is done on a pro rata basis there is no guarantee you can redeem all of your shares during a redemption window. This is at the Fund's discretion but typically it is a 5% minimum-25% maximum per quarter. This information is found in the prospectus and should be worded accordingly.
- When discussing Distributions and Return of Capital, it can not be referred to as a Dividend or Yield.
- You have to affirmatively state that Return of Capital was paid. No “may” language can be included.



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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Associate Director
FINRA Advertising Regulation

Panelists: Kavita Jain
Director
FINRA Office of Financial Innovation

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



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Private Placements, Digital Assets and Alternative Investments

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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Private Placements, Digital Assets and Alternative Investments

Thursday, October 24, 2019

11:30 a.m. – 12:30 p.m.

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



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.



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Advertising Compliance Boot Camp: Selected Topics

Thursday October 24

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 raise 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
FINRA Advertising Regulation

Panelists: Steven Choi
Principal Analyst
FINRA Advertising Regulation

Thomas Dineen
Associate Principal Analyst
FINRA Advertising Regulation

Joseph George
Associate Director
FINRA Advertising Regulation

- 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



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Advertising Compliance Boot Camp: Select Topics

Panelists

■ Moderator

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

■ Panelists

- **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**

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

23

ATM Funds Distributors LLC Member FINRA

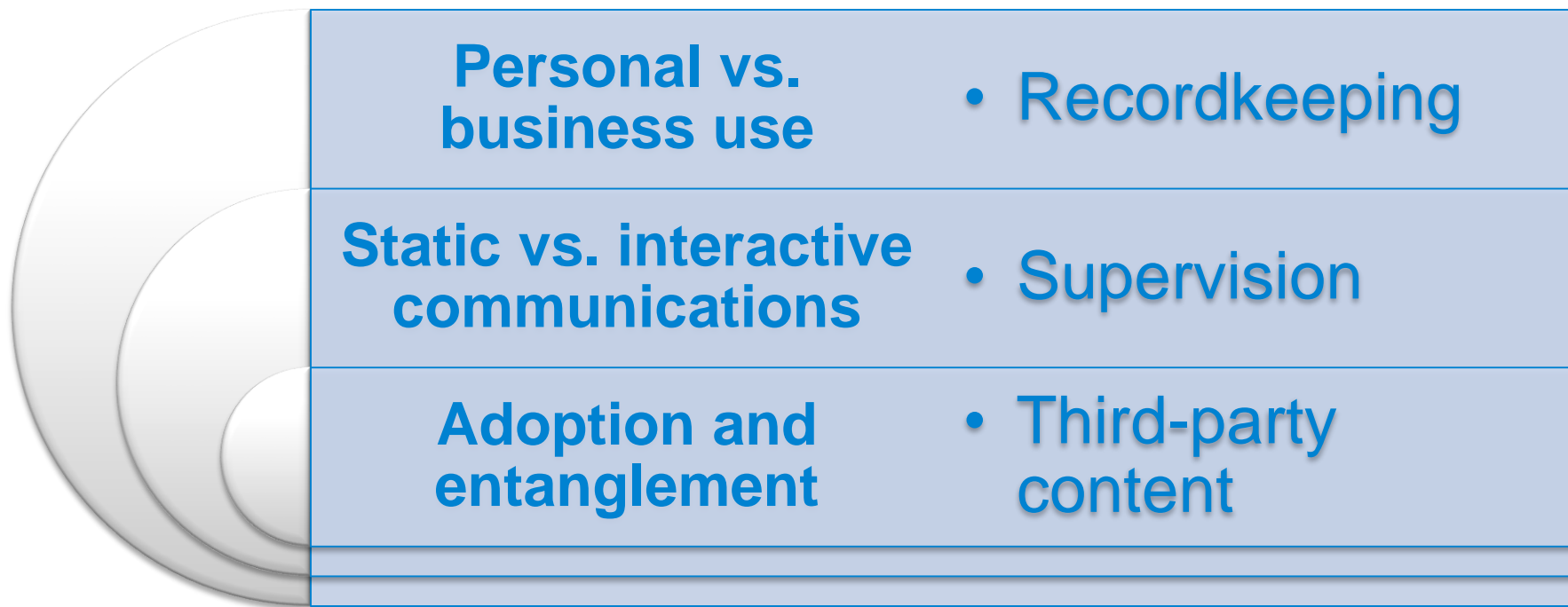
Investment Analysis Tools – Overview

- **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



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

General Brokerage and Supervision

Thursday, October 24, 2019

1:45 p.m. – 2:45 p.m.

Join FINRA staff and industry practitioners as they discuss advertising compliance and sales practice issues applicable to general brokerage firms and their registered representatives. Industry panelists explore advertising compliance challenges and how they address the advertising rules with respect to dually registered representatives, marketing materials created by third parties, and new investment products. This panel also covers current areas of interest such as private placements and consolidated reports.

Moderator: Stephanie Gregory
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Speakers: Mark Bleich
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Joseph Fleming
Senior Vice President and Advice and Wealth Management Chief Compliance Officer
Ameriprise Financial

Cameron Hellewell
General Counsel
Orchard Securities, LLC

General Brokerage and Supervision Panelist Bios:

Moderator:

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.

Speakers:

Mark Bleich is Principal Analyst in FINRA's Advertising Regulation Department and has served in this role since 2001. Mr. Bleich began his career in securities regulation as an Analyst in NASD's Market Regulation Department in 1995. Prior to joining the organization, Mr. Bleich was employed by the federal government in the background investigation and security clearance fields. He has a B.A. from the University of Maryland and an M.A. from George Washington University. He also completed the Certified Regulatory and Compliance Professional™ (CRCP™) program through the FINRA Institute at Wharton.

Joe Fleming is Chief Compliance Officer for Advice and Wealth Management, joining Ameriprise in that role in October 2017. He is responsible for the overall strategy and operation of AWM Compliance, including Compliance Policy and Training, Broker-Dealer Operations and Financial Compliance Oversight, Surveillance, AML/Anti-Fraud, Field Office Inspections, Products and Services Compliance, and Licensing and Registration Compliance. Prior to joining Ameriprise, Mr. Fleming was Head, Business Risk (2017) and Chief Compliance Officer (2005-2016) for RBC Wealth Management. While at RBC, he also served in several other lead compliance roles, including for RBC US' mutual fund company, trust company and private bank. Prior to RBC, Mr. Fleming was Chief Compliance Officer for Piper Jaffray Companies/US Bancorp Piper Jaffray (1999-2005), where he also served as Director of Compliance for US Bancorp Asset Management, and US Bancorp Investments, its bank broker-dealer. He has the following securities licenses: Series 7, 63, 24, 4, 65, 8, 14, and 3, and a Minnesota insurance license (expired). Mr. Fleming frequently serves on FINRA and SIFMA committees, currently serving on FINRA's Membership Committee and SIFMA's Compliance and Regulatory Policy Committee, and previously serving on the FINRA/Securities Industry Council on Continuing Education, including one year as its Chair. He is a regular presenter at SIFMA and FINRA conferences. He is also an adjunct professor at the University of St. Thomas Law School, and a member of its Ethics and Compliance Program Advisory Committee. He previously taught at William Mitchell College of Law, and the Wharton School of Business / NASD Certificate Program for Compliance and Regulatory Professionals.

As General Counsel of Orchard Securities, LLC, **Cameron Hellewell's** responsibilities focus on working with Orchard's sponsor clients and its broker-dealer selling group members in connection with the offer and sale of securities, including alternative investments through both publicly-registered, non-traded programs and private placements. He also assists Orchard's Chief Compliance Officer with respect to Orchard's regulatory compliance, and works closely with Orchard's outside counsel and the legal counsel to sponsors on a wide range of issues. Prior to joining Orchard, Mr. Hellewell's professional experience includes working for an international commercial real estate company, and a commercial real estate development company that developed assisted living centers, retail projects and office buildings. Mr. Hellewell earned his bachelor's degree from the University of Utah and his juris doctorate from the Case Western Reserve University School of Law. He is also a member of the Utah State Bar, the District of Columbia Bar, and the American Bar Association.



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Join FINRA staff and industry practitioners as they discuss advertising compliance and sales practice issues applicable to general brokerage firms and their registered representatives. Industry panelists explore advertising compliance challenges and explain how they address the advertising rules with respect to the creation and preparation of marketing materials, supervision, dually registered representatives, and seminar and radio shows. This panel also covers current areas of interest such as private placements and consolidated reports.

Moderator: Stephanie Gregory
Principal Analyst
FINRA Advertising Regulation

Panelists: Mark Bleich
Principal Analyst
FINRA Advertising Regulation

Joe Fleming
Chief Compliance Officer, Advice and Wealth Management
Ameriprise Financial

Cameron Hellewell
General Counsel
Orchard Securities

- I. Introduction
- II. General Firm Compliance
 - a. Overview of Firm and Structure of Compliance Department
 - b. Development of Marketing Material and Campaigns
 - c. Compliance Involvement in the Marketing Process
 - d. Lifecycle of a Communication
 - e. Compliance ChallengesUnique Communications
 - a. Complex Product Review—What to look for?
 - b. Biggest Obstacles
 - c. Staff training
- III. Dually Registered Broker-Dealer/Investment Advisor Representatives
 - a. Biggest challenges
 - b. SupervisionSocial Media
 - a. Personal and/or Business Use

- b. Supervision

Seminars and Radio Shows

- a. Content Control
- b. Scripted vs. Unscripted
- c. Training and Supervision

IV. Consolidated Reports

- a. Efficient Practices
- b. Areas of Concern

Registered Representative Considerations

- a. Designations
- b. Awards
- c. Titles and Business Group Names

Foreign Language Communications

- a. Certified Translation
- b. Offering Document

V. Wrap-up/Questions



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

General Brokerage and Supervision

Panelists

■ Moderator

- **Stephanie Gregory, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Mark Bleich, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**
- **Joseph Fleming, Senior Vice President and Advice and Wealth Management Chief Compliance Officer, Ameriprise Financial**
- **Cameron Hellewell, General Counsel, Orchard Securities, LLC**

General Compliance – The Firm's Perspective

- Overview of Firm and Structure
- Development of Marketing Material and Campaigns
- Compliance Involvement in the Marketing Process
- Lifecycle of a Communication
- Importance of Proper Supervision
- Compliance Challenges

Unique Communications

- **Complex Product Review—What to look for?**
- **Biggest Obstacles**
- **Staff Training**

Dually Registered BD / IA Representatives

- **Review and Approval Process**
- **Regulatory Challenges**
- **Supervision**

Social Media

- **Registered Representatives' Use of Social Media**
- **Process for Reviewing, Supervising, and Approving**
- **Biggest Firm Concerns and Challenges**
- **Record Retention**
- **Registered Representative Websites**

Seminars and Radio Shows

■ Content Control

- Providing Pre-Approved Content
- Registered Representative Created Content

■ Scripted vs. Unscripted

■ Considerations for Client Events

■ Training and Supervision

Consolidated Reports

■ How Consolidated Reports are Created

- In House
- Outsourced
- Software

■ Effective Practices

■ Areas of Concern

Registered Representative Considerations

■ How Registered Representatives Promote Themselves

- Designations
- Awards
- Titles
- Business Group Names

Foreign Language Communications

- The Firm Process
- Supervision and Review
- Certified Translation
- Offering Document



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Questions and Answers



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General Brokerage and Supervision

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Resources

FINRA Regulatory Notices

- FINRA Regulatory Notice 19-31, *Disclosure Innovations in Advertising and Other Communications* (September, 2019)

www.finra.org/rules-guidance/notices/19-31

- FINRA Regulatory Notice 17-18, *Social Media and Digital Communications, Guidance on Social Networking Websites and Business Communications* (April 2017)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-18.pdf

- FINRA Regulatory Notice 15-50, *BrokerCheck, SEC Approves Rule Requiring Members' Websites to Include a Readily Apparent Reference and Hyperlink to BrokerCheck* (December, 2015)

www.finra.org/sites/default/files/Notice_Regulatory_15-50.pdf

- FINRA Regulatory Notice 15-32, *Regulation A Offerings, Filing Requirements and Review of Regulation A Offerings* (September, 2015)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-32.pdf

- FINRA Regulatory Notice 15-31, *Debt Research. SEC Approves Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Debt Research Reports* (August 2015)

www.finra.org/sites/default/files/Regulatory-Notice-15-31_0.pdf

- FINRA Regulatory Notice 15-30, *Equity Research. SEC Approves Consolidated Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Equity Research Reports* (August 2015)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-30.pdf

- FINRA Regulatory Notice 15-02, *Values of DPP and Unlisted REIT Securities, SEC Approves Amendments to FINRA Rule 2310 and NASD Rule 2340 to Address Values of Direct Participation Program and Unlisted Real Estate Investment Trust Securities* (April, 2016)

www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-02.pdf

- FINRA Regulatory Notice 13-45, *Rollovers to Individual Retirement Accounts, FINRA Reminds Firms of Their Responsibilities Concerning IRA Rollovers* (December 2013)

www.finra.org/sites/default/files/NoticeDocument/p418695.pdf

- *FINRA Regulatory Notice 13-23, Brokerage and Individual Retirement Account Fees, FINRA Provides Guidance on Disclosure of Fees in Communications Concerning Retail Brokerage Accounts and Individual Retirement Accounts* (July 2013)

www.finra.org/sites/default/files/NoticeDocument/p304670.pdf
- *FINRA Regulatory Notice 13-18, Communication With the Public, FINRA Provides Guidance on Communications With the Public Concerning Unlisted Real Estate Investment Programs* (May 2013)

www.finra.org/sites/default/files/NoticeDocument/p253836.pdf
- *FINRA Regulatory Notice 12-29, Communications with the Public, SEC Approves New Rules Governing Communications With the Public* (June 2012)

www.finra.org/sites/default/files/NoticeDocument/p127014.pdf
- *FINRA Regulatory Notice 12-03, Complex Products, Heightened Supervision of Complex Products* (January 2012)

www.finra.org/sites/default/files/NoticeDocument/p125397.pdf
- *FINRA Regulatory Notice 11-39, Social Media Websites and the Use of Personal Devices for Business Communications. Guidance on Social Networking Websites and Business Communications, Guidance on Social Networking Websites and Business Communications* (August 2011)

www.finra.org/sites/default/files/NoticeDocument/p124186.pdf
- *FINRA Regulatory Notice 10-52, Application of Rules on Communications With the Public and Institutional Sales Material and Correspondence to Certain Free Writing Prospectuses* (October 2010)

www.finra.org/sites/default/files/NoticeDocument/p122310.pdf
- *FINRA Regulatory Notice 10-51, Commodity Futures-Linked Securities, Sales Practice Obligations for Commodity Futures-Linked Securities* (October 2010)

www.finra.org/sites/default/files/NoticeDocument/p122289.pdf
- *FINRA Regulatory Notice 10-19, Consolidated Reports, FINRA Reminds Firms of Responsibilities When Providing Customers With Consolidated Financial Account Reports,* (April 2010)

www.finra.org/sites/default/files/NoticeDocument/p121253.pdf
- *FINRA Regulatory Notice 10-09, Reverse Convertibles, FINRA Reminds Firms of Their Sales Practice Obligations With Reverse Exchangeable Securities (Reverse Convertibles)* (February 2010)

www.finra.org/sites/default/files/NoticeDocument/p120920.pdf
- *FINRA Regulatory Notice 10-06, Social Media Web Sites, Guidance on Blogs and Social Networking Web Sites* (January 2010)

www.finra.org/sites/default/files/NoticeDocument/p120779.pdf

- *FINRA Regulatory Notice 08-82, Cash Alternatives, FINRA Reminds Firms of Their Sales Practice Obligations with Regard to Cash Alternatives* (December 2008)
www.finra.org/sites/default/files/NoticeDocument/p117559.pdf
- *FINRA Regulatory Notice 08-81, High Yield Securities, FINRA Reminds Firms of Their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment* (December 2008)
www.finra.org/sites/default/files/NoticeDocument/p117558.pdf
- *FINRA Regulatory Notice 08-77, Customer Account Statements, FINRA Provides Guidance on Estimated Annual Income and Estimated Yield* (December 2008)
www.finra.org/sites/default/files/NoticeDocument/p117530.pdf
- *FINRA Regulatory Notice 08-27, The Obligation of Firms When Supervising their Registered Representatives' Use of Marketing Materials to Establish Expertise* (May 2008)
www.finra.org/sites/default/files/NoticeDocument/p038522.pdf
- *FINRA Regulatory Notice 07-43, FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers* (September 2007)
www.finra.org/sites/default/files/NoticeDocument/p036816.pdf
- *Notice to Members 05-59, Structured Products, NASD Provides Guidance Concerning the Sale of Structured Products* (September 2005)
www.finra.org/sites/default/files/NoticeDocument/p014997.pdf
- *Notice to Members 04-30 Sales Practice Obligations, FINRA Reminds Firms of Sales Practice Obligations In Sale of Bonds and Bond Funds* (April 2004)
www.finra.org/sites/default/files/NoticeDocument/p003130.pdf

Investor Alerts

- *The IRA Rollover: 10 Tips to Making a Sound Decision* (January 2014)
www.finra.org/investors/alerts/ira-rollover-10-tips-making-sound-decision
- *Municipal Bonds—Important Considerations for Individual Investors* (April 2013)
www.finra.org/investors/alerts/municipal-bonds-important-considerations-individual-investors
- *Duration What an Interest Rate Hike Could Do to Your Bond Portfolio* (February 2013)
www.finra.org/investors/alerts/duration-what-interest-rate-hike-could-do-your-bond-portfolio
- *Exchange-Traded Notes—Avoid Unpleasant Surprises* (July 2012)
www.finra.org/investors/alerts/exchange-traded-notes-avoid-unpleasant-surprises

- *The Grass Isn't Always Greener Chasing Return in a Challenging Investment Environment* (July 2011)
www.finra.org/investors/alerts/grass-isnt-always-greener-chasing-return-challenging-investment-environment
- *Structured Notes With Principal Protection: Note the Terms of Your Investment* (June 2011)
www.finra.org/investors/alerts/structured-notes-principal-protection-note-terms-your-investment
- *Reverse Convertibles – Complex Investment Vehicles* (February 2010)
www.finra.org/investors/alerts/reverse-convertibles-complex-investment-vehicles
- *"Free Lunch" Investment Seminars—Avoiding the Heartburn of a Hard Sell* (September 2007)
www.finra.org/investors/alerts/free-lunch-investment-seminars-avoiding-heartburn-hard-sell

Other Resources

- *FDIC Consumer News, Market-Linked CDs: Don't Let the Possibility of Higher Returns Cloud Your View of the Potential Risks* (Spring 2012)
www.fdic.gov/consumers/consumer/news/cnspr12/marketlinkedcds.html



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Investment Company Topics Repeat Session

Thursday, October 24, 2019

1:45 p.m. – 2:45 p.m.

Join FINRA staff and industry panelists as they discuss advertising compliance issues concerning registered investment companies, including mutual funds, ETFs and closed-end funds. The panel includes discussions on current topics and trends, including innovative products, regulatory interpretations and compliance tips.

Moderator: Gregory Riviello
Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Meredith Henning
Managing Director, Advertising Compliance
Foreside

JoDee Murphy
Assistant Vice President, Compliance Manager
ALPS Fund Services, Inc.

Richard Vagnoni
Senior Economist, Office of Financial Innovation
FINRA Office of Financial Innovation (OFI)

Investment Company Topics Repeat Session 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.

Speakers:

Meredith Henning, Managing Director of Advertising Compliance, joined Foreside in 2005. She oversees the advertising compliance function for open- and closed-end funds, exchange-traded products, commodity pools and private placements. Prior to joining Foreside, she was a manager of client services for a Chicago based mutual fund company and also served as a manager of investor services for an online brokerage firm. She holds FINRA series 7, 24, 63 and 79 registrations.

JoDee B. Murphy, Assistant Vice President and Compliance Manager, has more than 18 years of financial services industry experience, including 16 years focused on the review of marketing collateral. Ms. Murphy graduated from the University of Colorado with a B.A. in Psychology. She has obtained the S6, S26 and S99 registrations and in her current role at ALPS she oversees the advertising department and is responsible for the review and approval of all mutual funds and exchange traded funds' marketing collateral.

Richard Vagnoni is Senior Economist in FINRA's Office of Emerging Regulatory Issues in Washington, DC. Mr. Vagnoni provides economic analysis support, studies relevant academic and industry research, and monitors and analyzes new and innovative products, including exchange-traded products and structured retail products. Mr. Vagnoni has a B.A. from the Johns Hopkins University and a Ph.D. from the University of California, Santa Barbara, both in economics.



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Investment Company Topics

Thursday, October 24, 2019

11:30 a.m. – 12:30 p.m.

Join FINRA staff and industry panelists as they discuss advertising compliance issues concerning registered investment companies, including mutual funds, ETFs and closed-end funds. The panel includes discussions on current topics and trends, including innovative products, regulatory interpretations and compliance tips.

Moderator: Gregory Riviello
Director, Advertising Regulation
FINRA Advertising Regulation

Speakers: Meredith Henning
Managing Director, Advertising Compliance
Foreside

JoDee Murphy
Assistant Vice President, Compliance Manager
ALPS Fund Services, Inc.

Richard Vagnoni
Senior Economist, Office of Financial Innovation
FINRA Office of Financial Innovation (OFI)

- I. Introduction
- II. ESG Funds
 - a) What are they?
 - b) Regulatory issues
- III. Interval Funds
 - a) What are they?
 - b) Regulatory issues
- IV. Defined Outcome Registered Investment Company Products
 - a) What are they?
 - b) Regulatory issues
- V. Pre-Inception Performance
 - a) FINRA pre-inception index performance interpretive guidance
 - b) Use with institutional clients
- VI. Industry and FINRA Collaboration
- VII. Wrap-up



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Investment Company Topics (Repeat Session)

Panelists

■ Moderator

- **Gregory Riviello, Director, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Meredith Henning, Managing Director, Advertising Compliance, Foreside**
- **JoDee Murphy, Assistant Vice President, Compliance Manager, ALPS Fund Services, Inc.**
- **Richard Vagnoni, Senior Economist, Office of Financial Innovation, FINRA Office of Financial Innovation (OFI)**

To Access Polling

- Under the “Schedule” icon on the home screen,
- Select the day,
- Choose the Investment Company Topics (Repeat Session),
- Click on the polling icon:



ESG Investing

- **Environmental, Social, and Governance (ESG) investing**
 - Also referred to as Socially-Responsible Investing (SRI)
 - **Environmental:** climate change, clean technology, pollution abatement, and water conservation
 - **Social:** gender and diversity policies, workplace safety, human rights, labor standards, and employee relations
 - **Governance:** executive compensation, board diversity, political contributions, anti-bribery and corruption policies
 - Objective is to generate competitive financial returns while creating a positive impact on society

Polling Question 1 – ESG Investing

- 1. Does your firm currently distribute or plan to distribute within the next 12 months, ESG registered investment company securities i.e., mutual funds, ETFs UITs closed-end funds?**
 - a. Yes**
 - b. No**

ESG Investing

- Significant market growth (2018 estimate of \$12 trillion)
- Mutual funds, ETPs, “green” bonds, and others
- Institutional investors, but increasingly retail
- Performance?
- Risks and concerns
 - Lack of consistency in ESG criteria
 - Lack of transparency in ESG methodologies
 - Potentially misleading marketing and communications
 - Potentially limited diversification

ESG Investing

- Many investors find environmental, social and governance factors important when choosing an investment.
- Many fund companies have different approaches to the screening for these types of investments.
- Not one size fits all. It is important for the investor to understand “doing well by doing good” still involves risk.
- While ESG investing may have many benefits, it does not mean the investments will perform better.

ESG Investing

- **Materials should always disclose the primary risks as identified in the prospectus.**
- **Depending on the focus of the material, risk information may need to be embedded within the main body of the text to balance the language.**
- **Compliance staff should review specifically on the ESG strategy being promoted. There is not a one size fits all disclosure as there are many worthwhile causes to support and they all do not have the same level of risk.**

ESG Investing

- **ESG metrics are not reported equally, therefore it is on the investor or the adviser to understand the issues of each individual product. This translates the same for the compliance staff.**
- **The compliance staff needs to be trained properly to review the product.**

Interval Funds

- Interval funds are a type of closed-end fund.
- They are often marketed as high-yielding investments with returns that are less volatile than the broader stock market.
- Interval funds also offer retail investors access to alternative investment strategies and illiquid assets such as catastrophe bonds, private company stock, real estate and peer-to-peer loans, among others.
- Interval funds offer to repurchase their shares from shareholders at periodic and predetermined intervals, generally three, six or 12 months.

Interval Funds

■ Limited Redemption Opportunities

- Interval funds typically price daily at net asset value (NAV), however, redemptions are limited.
- Rather than trade in the secondary market, they periodically offer to repurchase a percentage of outstanding shares from investors on a pro-rata basis.
- There is no guarantee a shareholder can redeem the desired number of shares during the redemption period, making them generally illiquid.

Interval Funds

■ NSCC/AIP

- Interval funds can either be offered through the National Securities Clearing Corporation (“NSCC”) or Alternative Investment Product (“AIP”) Services.
- NSCC is typically used by traditional mutual funds to provide clearing, settlement, risk management, and information services to the financial industry.
- AIP standardizes the way global market participants communicate information concerning alternative investments, removing the manual operational challenges that can be associated with these types of products.

Interval Funds

■ Onboarding Requirements

- Intermediary platforms that offer interval funds alongside traditional open-end mutual funds tend to have stricter onboarding requirements for alternative funds.
- They may require significant investor demand, a more extensive due diligence review, and potentially charge higher fees due to the operational restrictions associated with supporting these products.
- It is essential to keep in mind that not all intermediaries support this structure for onboarding and use by their advisor base.

Interval Funds

■ Attraction of Interval Funds

- Since interval fund portfolio managers are not concerned with meeting daily redemption requests, they are able to invest in assets or implement investment strategies that may be less liquid and more suited to longer holding periods.
- They also have the ability to invest in alternative types of assets, all of which lend to the possibility for higher returns than open-end mutual funds.

Interval Funds

■ Education is Key

- **Factsheets on strategies are a baseline, but with a non-standard vehicle, developing content to educate advisors on the structure and operational complexity is critical.**
- **Intermediaries and advisors may require additional insight into the mechanics of the need for this vehicle, how it works, differences, benefits, and risks.**
- **Also, continued advocacy with industry groups such as the Broker-Dealer Advisory Committee (“BDAC”) at ICI to innovate around improving and automating operational complexities is necessary.**

Interval Funds

■ Disclosure Tips

- **Must be labeled appropriately as an interval closed end fund. This language should be prominent and clearly labeled.**
- **If your Form N2 or prospectus states the interval closed end fund is non-diversified this must also be clearly labeled.**
- **Specific key risks must be adequately explained.**
- **Key risks must be shown prominently and not placed in a footnote.**
- **If the concept of liquidity is mentioned in an advertisement the limited liquidity disclosure should be more prominent than other fund risk disclosures.**

Interval Funds

■ Key risks might include the following:

- The Fund should be considered a speculative, long-term investment of limited liquidity that entails substantial risks, and prospective investors should invest in the Fund only if they can sustain a complete loss of their investments.
- Investing in the Fund involves risks, including the risk that a shareholder may receive little or no return on their investment or that a shareholder may lose part or all of its investment.

Interval Funds

■ Key risks might include the following:

- Shares of the fund will not be listed on any securities exchange, which makes them inherently illiquid. An investment in the fund's shares is not suitable for investors who cannot tolerate risk of loss or who require liquidity, other than liquidity provided through the fund's repurchase policy. The Fund is suitable only for investors who can bear the risks associated with the Fund's limited liquidity and should be viewed as a long-term investment.
- The Fund may pay distributions in significant part from sources that may not be available in the future and that are unrelated to the Fund's performance, such as a return of capital, borrowings or expense reimbursements and waivers. (Once the fund has paid distributions from non-income sources this needs to be disclosed.)

Interval Funds

■ Key risks might include the following:

- Liquidity for the Shares will be provided only through quarterly repurchase offers between 5% and 25% of the Shares at NAV, and there is no guarantee that an investor will be able to sell all the Shares that the investor desires to sell in the repurchase offer. Due to these restrictions, an investor should consider an investment in the Fund to be of limited liquidity.

Interval Funds

■ Disclosure Tips When Marketing Interval Funds (refer to document in resource section)

- SEC Rule 482
- Fees and costs
- References to liquidity
- Distributions and return of capital

Defined Outcome Investments

- **Defined outcome investing: New terminology for payoffs historically found in structured retail products**
 - Example: Limit potential losses in exchange for limiting gains
 - Often reflect embedded optionality
 - Generally considered to be “complex”
- **Various efforts to expand availability of these payoffs**
 - Annuities, closed-end funds, mutual funds, UITs, and ETFs
 - Targeting wider retail investor audience
 - Addressing common historical criticisms of structured notes
 - Opacity, relatively high costs, illiquidity, and counterparty credit risk

Defined Outcome Investments

■ ETF example

- **Provide a “defined outcome” at the end of a one-year period**
 - Exposure to gains in the S&P 500, up to a cap (e.g., 10%)
 - Protection against index losses (e.g., the first 15% of losses)
 - If investor buys at launch and holds to the end of the one-year period
 - Index loses 20%: investor loses 5%
 - Index loses up to 15%: investor return is 0%
 - Index gains 5%: investor return is 5%
 - Index gains 10% or more: investor return is 10%
- **Exposure is re-set at the end of the one-year period**

Defined Outcome Investments

■ Concerns

- **As the target audience for such products expands, the potential novelty and inherent complexity of the payoff structures as well as the variety of products in which they now appear may heighten the risk of mis-selling.**
- **Financial advisors and investors may not fully appreciate the trade-offs between the various risks and benefits offered by these products, such as the potential cost of downside protection.**
- **They also may not fully understand how structured payoffs should be used in a portfolio, how optionality embedded in the products can impact their ongoing valuation and performance, or how the different product structures may affect investing experience and outcomes.**

Defined Outcome Investments

- **Reviewing sales material for these investments can be different due to the complexity of the product which is why education for the reviewers has become critically important.**
 - **Open lines of communication are key.**
 - **Working with the portfolio managers and/or investment strategists is helpful as they can communicate the concepts best.**
 - **Compliance teams or individuals approving sales materials need to learn the strategy mechanics and be able to provide concise comments to help in the production of compliant marketing material.**

Defined Outcome Investments

- **The material should not imply any level of protection, this triggers concerns from regulators.**
- **Clarifying language should be in the body of the material and not relegated to disclosures at the end of the material.**
- **Disclosures must be clear and easy to understand for the retail investor.**
- **Build in review time to provide appropriate feedback for the material. Set appropriate expectations and ask questions.**

Pre-Inception Index Performance

■ Interpretive letter to Meredith F. Henning, Foreside

- January 31, 2019
- A member firm may include pre-inception index performance data in institutional communications concerning registered open-end investment companies.

■ Interpretive letter to Bradley J. Swenson, ALPS Distributors, Inc.

- April 22, 2013
- A member firm may include pre-inception index performance data in institutional communications concerning exchange traded products.

Pre-Inception Index Performance

- **Must only be used with institutional clients.**
- **Firms find it useful in helping institutional clients make better investment decisions.**

Pre-Inception Index Performance

■ Key Guidance Tips:

- Pay close attention to #2 of the PIP guidance (Any PIP data would be used only with respect to an Index created according to a pre-defined set of rules that cannot be altered except under extraordinary market, political or macroeconomic conditions)
- If the methodology is changed and it is not due to extraordinary market, political or macroeconomic conditions you will not be able to use PIP going forward.

Pre-Inception Index Performance

■ Key Guidance Tips:

- When showing PIP data, it must be presented separately from actual performance.
- The presentation of PIP data will reflect the deduction of fees and charges applicable to the ETF (no exception)

Resources

■ FINRA Interpretive Letters

- Interpretive Letter to Meredith F. Henning, Foreside
- Interpretive Letter to Bradley J. Swenson, ALPS Distributors, Inc.

■ FINRA Investor Insights

- *Investor Tips: Interval Funds – 6 Things to Know Before You Invest*

Interval Funds

THINGS TO NOTE:

- SEC Rule 482 (b)(3) – applies to *open-end investment companies* which is the performance disclosure legend; however, an interval fund that is showing performance must be fair and balanced. At a minimum, the general past performance disclosure must be included (performance quoted represents past performance and does not guarantee future results).
- SEC Rule 482(d)(3) – average annual total returns (standardized performance) be based on computation prescribed in Form N-1A; however, if an interval closed-end fund does not show standardized performance then the periods shown for performance should be shown for short, medium and long periods so that the item is fair and balanced and not misleading by only showing one period of time.
- Must label fees appropriately. For example, Gross, Total, Total excluding certain fees, etc., must be named according to the prospectus fee table.
- If the interval fund offers different share classes which are subject to distribution fees and additional costs such as front-end, trailing and redemption fees, this material information must be disclosed.
- Be careful when referring to interval funds as being liquid. Because a repurchase is done on a pro rata basis there is no guarantee you can redeem all of your shares during a redemption window. This is at the Fund's discretion but typically it is a 5% minimum-25% maximum per quarter. This information is found in the prospectus and should be worded accordingly.
- When discussing Distributions and Return of Capital, it can not be referred to as a Dividend or Yield.
- You have to affirmatively state that Return of Capital was paid. No “may” language can be included.



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Advertising Review Workshop

Thursday, October 24, 2019

3:00 p.m. – 4:00 p.m.

During this highly interactive and dynamic session, attendees apply advertising rules to several mock advertisements and uncover the hidden concerns. Attendees work in small groups and present their findings to fellow participants, while moderators present the regulatory perspective, clarify any misperceptions and answer questions.

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

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

Kimberly Flanders
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Advertising Review Workshop 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.

Kimberly Flanders is Principal Analyst in FINRA's Advertising Regulation Department. She has served in this role since 2002 and joined the Department in 1996. Prior to joining FINRA, Ms. Flanders was an investigator for the Resolution Trust Company in Washington, DC. Previous to this role, she was a staff member of the Permanent Subcommittee on Investigations, chaired by the former U.S. Senator from Georgia, Sam Nunn. Ms. Flanders received her bachelor's degree from the University of Georgia.



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Advertising Review Workshop

Panelists

■ Moderator

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

■ Panelists

- **Steven Choi, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**
- **Kimberly Flanders, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**

Communication No. 1: Print Advertisement



MARCO POLO AMAZON FUND

SEARCHING THE WORLD FOR SOCIALLY RESPONSIBLE &
ENVIRONMENTALLY CONSCIOUS OPPORTUNITIES

The Marco Polo Amazon Fund invests in dynamic companies pursuing innovative solutions to the complex issues of energy production, resource recovery and sustainable agriculture and forestry.

Disclosures: The fund employs a research-intensive bottom-up stock selection process to find the leading companies in increasingly important global environmental markets. The market price of equity securities may fluctuate significantly, rapidly and unpredictably, causing the Fund to experience losses. The prices of equity securities generally are more volatile than the prices of debt securities. Market Risk Conditions in a broad or specialized market, a sector thereof or an individual industry may adversely affect security prices, thereby reducing the value of the Fund's investments. To the extent the Fund takes significant positions in one or more specific sectors, countries or regions, the Fund will be subject to the risks associated with such sector(s), country(ies) or region(s) to a greater extent than would be a more broadly diversified fund. Companies that issue value securities may have experienced adverse business developments or may be subject to special risks that have caused their securities to be out of favor. The Fund may invest in companies that may not be expected to experience significant earnings growth, but whose securities the investment adviser believes are selling at a price lower than their true value. Companies that issue value securities may have experienced adverse business developments or may be subject to special risks that have caused their securities to be out of favor. If the investment adviser's assessment of a company's prospects is wrong, or if the market does not recognize the value of the company, the price of its securities may decline or may not approach the value that the investment adviser anticipates. The Fund is actively managed. The investment techniques and decisions of the investment adviser and the Fund's portfolio manager(s) may not produce the desired results. As with all mutual funds, investors may lose money by investing in the Fund.





Marco Polo Alternative Funds
Discovering a New World of Opportunities

Consider the investment objectives, risks, and charges and expenses of the Marco Polo Amazon Fund carefully before investing; the prospectus contains this and other information; call your financial advisor or visit www.marco-polo-funds.com to obtain a prospectus. Read it carefully before investing.


Marco Polo Funds Distributors, LLC Member, FINRA.


Communication No. 2: Social Media

 home @friends tag



John "Jack" Dawkins
@JDawkins
Husband. Father. Son.
Financial Advisor with
Charles Dickens Financial Services, LLC



3,775 Chirps
1,587 Following
1,585 Followers

Following more...


Trending more...
#football
#back2school
#electionnews
#sports
#autumn

Chirps

Jack Dawkins @JDawkins 1 day ago
Looking for an advisor? I've got 20+ years experience and \$500million assets under management. Check my record or anyone else's at [brokercheck.finra.org](#) [#brokercheck](#)


Jack Dawkins @JDawkins 2 days ago
Charles Dickens Financial introduces new Cash Savings Account with 2.19% interest! Better than your bank's savings account! [#FDIC](#)

Jack Dawkins @JDawkins 3 days ago
Earn 2.19% interest all day every day! Take advantage of Charles Dickens Financial's new Cash Savings Account today. [#Savings](#) [#Online banking](#) [#FDIC](#)

Jack Dawkins @JDawkins 4 days ago
My daughter just got accepted into Georgetown University. Now 2 kids at private \$5 universities. Glad I followed my own advice and planned for the expense. [#College Planning](#)

Jack Dawkins @JDawkins 4 days ago
"Charles Dickens Financial launches new Cash Savings Account" via [@CJZnewspresscom](#)

Jack Dawkins @JDawkins 5 days ago
I offer personalized comprehensive financial plans for busy professionals. Let me draw your retirement roadmap. Follow expert advice! Read [http://www.barrons.com](#) [http://www.wsj.com](#)

Jack Dawkins @JDawkins 6 days ago
Back refreshed from our Yosemite vacation! We have a beautiful country!

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Communication No. 3: Enlightenment 529 Postcard

Kids Dream BIG... So Should Their Parents



Rollover an Out of State 529 Plan & Save!

Investing in the Enlightenment 529 Growth Fund entitles you to a \$5,000 (for single filers) and \$10,000 (for investors filing jointly) state income tax deduction. Rollover money counts!

Tax-advantage Savings: Withdrawals from an Enlightenment 529 Growth Fund account are free from Federal and, in most cases, State income tax if the money is used for qualified education expenses*

Use Your Savings to Pay Education Expenses: You can use the money in your account to pay for education expenses, including tuition, room and board, and required books and supplies at undergraduate and graduate universities nationwide and now, K-12 tuition costs!

*If withdrawals from your Enlightenment 529 Growth Fund account for purposes other than qualified educational expenses (elementary to secondary to university expenses), the earnings will be subject to a 10% federal tax penalty in addition to federal and state income tax, if applicable.

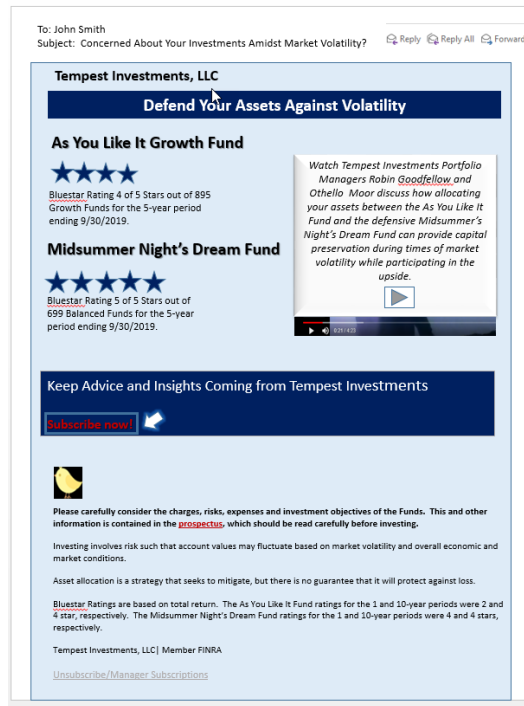
Investors should carefully consider the investment objectives, risks, charges and expenses associated with municipal fund securities before investing. This, and other information, is contained in the Enlightenment 529 Growth Fund Disclosure Statement and the fund prospectus, which can be obtained from your financial professional or enlightenment529.org and should be read carefully before investing. As with all investments, there are risks posed by the fund and they are discussed in the Disclosure Statement.

Investors are encouraged to consult a tax professional. Enlightenment Plan Services, LLC. Member FINRA.



U.S.
Postage
Required

Communication No. 4: Email Blast



2019 Advertising Regulation Conference

October 24 – 25 | Washington, DC



Advertising Review Workshop





2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Advertising Review Workshop

Thursday, October 24

3:00 p.m. – 4:00 p.m.

Friday, October 25

11:00 a.m. – 12:00 p.m.

During this highly interactive and dynamic session, attendees apply advertising rules to several mock advertisements and uncover the hidden concerns. Attendees work in small groups and present their findings to fellow participants, while moderators present the regulatory perspective, clarify any misperceptions and answer questions.

Moderator: Anthony Maher (Moderator)
Associate Director

Panelists: Steven Choi
Principal Analyst

Kimberly Flanders
Principal Analyst

Matthew Pinto
Associate Principal Analyst

- I. Introduction
- II. Open discussion and analysis among Workshop attendees in small groups
- III. Presentation of small group analyses to full audience
- IV. Department presentation

Communication No. 1: Print Advertisement



MARCO POLO AMAZON FUND

SEARCHING THE WORLD FOR SOCIALLY RESPONSIBLE &
ENVIRONMENTALLY CONSCIOUS OPPORTUNITIES

The Marco Polo Amazon Fund invests in dynamic companies pursuing innovative solutions to the complex issues of energy production, resource recovery and sustainable agriculture and forestry.

Disclosures: The fund employs a research-intensive bottom-up stock selection process to find the leading companies in increasingly important global environmental markets. The market price of equity securities may fluctuate significantly, rapidly and unpredictably, causing the Fund to experience losses. The prices of equity securities generally are more volatile than the prices of debt securities. Market Risk Conditions in a broad or specialized market, a sector thereof or an individual industry may adversely affect security prices, thereby reducing the value of the Fund's investments. To the extent the Fund takes significant positions in one or more specific sectors, countries or regions, the Fund will be subject to the risks associated with such sector(s), country(ies) or region(s) to a greater extent than would be a more broadly diversified fund. Companies that issue value securities may have experienced adverse business developments or may be subject to special risks that have caused their securities to be out of favor. The Fund may invest in companies that may not be expected to experience significant earnings growth, but whose securities the investment adviser believes are selling at a price lower than their true value. Companies that issue value securities may have experienced adverse business developments or may be subject to special risks that have caused their securities to be out of favor. If the investment adviser's assessment of a company's prospects is wrong, or if the market does not recognize the value of the company, the price of its securities may decline or may not approach the value that the investment adviser anticipates. The Fund is actively managed. The investment techniques and decisions of the investment adviser and the Fund's portfolio manager(s) may not produce the desired results. As with all mutual funds, investors may lose money by investing in the Fund.



Marco Polo Alternative Funds
Discovering a New World of Opportunities

Consider the investment objectives, risks, and charges and expenses of the Marco Polo Amazon Fund carefully before investing; the prospectus contains this and other information; call your financial advisor or visit www.marcopolofunds.com to obtain a prospectus. Read it carefully before investing.

Marco Polo Funds Distributors, LLC. Member, FINRA.

Additional Information

Filing Information

- Print advertisement filed with the Advertising Regulation Department on September 9, 2019.
- Published in national newspapers, magazines and other national media.
- Date of registered principal approval: September 1, 2019.
- Anticipated date of first use: September 16, 2019.

Fund Information

- Open-end actively managed mutual fund.
- Benchmark: FTSE Environmental Opportunities Index Series.
- Investment Objective: Seeks long-term growth of capital.
- Strategy: Bottom-up stock selection is focused on earnings growth consistency, capital discipline, relative valuation and identified catalysts with potential for stock price appreciation. Environmental, Social and Governance (ESG) research is an integral component of securities analysis.
- Risks: Market risk, including potential loss of principal. Derivatives risk, Non U.S. Securities Risk, Value Securities Risk.

Communication No 2.: Social Media



John "Jack" Dawkins

@JDawkins

Husband. Father. Son.

Financial Advisor with

Charles Dickens Financial Services, LLC



Follow

3,775 Chirps

1,587 Following

1,585 Followers

Compose a new
Chirp...

Following

more...



Trending

more...

#football
#back2school
#electionnews
#sports
#autumn

Chirps

Jack Dawkins @JDawkins

1 day ago

Looking for an advisor? I've got 20+ years experience and \$500million assets under management. Check my record or anyone else's at brokercheck.finra.org. #brokercheck

Jack Dawkins @JDawkins

2 days ago

Charles Dickens Financial introduces new Cash Savings Account with 2.19% interest! Better than your bank's savings account! #FDIC



Jack Dawkins @JDawkins

3 days ago

Earn 2.19% interest all day every day! Take advantage of Charles Dickens Financial's new Cash Savings Account today. #Savings #Online banking #FDIC

Jack Dawkins @JDawkins

4 days ago

My daughter just got accepted into Georgetown University. Now 2 kids at private \$\$ universities. Glad I followed my own advice and planned for the expense. #College Planning

Jack Dawkins @JDawkins

4 days ago

"Charles Dickens Financial launches new Cash Savings Account" via [@XYZnewspresscorp](https://twitter.com/XYZnewspresscorp).

Jack Dawkins @JDawkins

5 days ago

I offer personalized comprehensive financial plans for busy professionals. Let me draw your retirement roadmap. Follow expert advice! Read <http://www.barrons.com> <http://www.wsj.com>.

6 days ago

Back refreshed from our Yosemite vacation! We have a beautiful country!

©2019 Chirper

About Help

Careers Privacy

Terms Advertisers

Additional Information

Filing Information:

- Jack Dawkins is a registered representative and registered investment advisor of Charles Dickens Financial Services LLC.
- Charles Dickens Financial Services LLC is a registered broker/dealer and registered investment advisor.
- Jack Dawkins' personal Chirper page.
- Obtained during a sweep focused on social media.
- Chirper page not reviewed or approved by a registered principal of the firm.
- Chirper page not retained by the firm.

Additional Information:

- The Cash Savings Account is cash management account offered by Charles Dickens Financial Services LLC, member FINRA. An investor must open a brokerage account with Charles Dickens Financial Services in order to take advantage of the Cash Savings Account. The Cash Savings Account is a money market mutual fund, not a bank account insured by the FDIC. The 2.19% is the money market fund's 7-day current yield as of September 20, 2019.

Communication No. 3: Enlightenment 529 Postcard

Kids Dream BIG... So Should Their Parents

Rollover an Out of State 529 Plan & Save!

Investing in the Enlightenment 529 Growth Fund entitles you to a \$5,000 (for single filers) and \$10,000 (for investors filing jointly) state income tax deduction. Rollover money counts!

Tax-advantage Savings: Withdrawals from an Enlightenment 529 Growth Fund account are free from Federal and, in most cases, State income tax if the money is used for qualified education expenses!*

Use Your Savings to Pay Education Expenses: You can use the money in your account to pay for education expenses, including tuition, room and board, and required books and supplies at undergraduate and graduate universities nationwide and now, K-12 tuition costs!

*If withdrawals from your Enlightenment 529 Growth Fund account for purposes other than qualified educational expenses (elementary to secondary to university expenses), the earnings will be subject to a 10% federal tax penalty in addition to federal and state income tax, if applicable.

U.S.
Postage
Required

Investors should carefully consider the investment objectives, risks, charges and expenses associated with municipal fund securities before investing. This, and other information, is contained in the Enlightenment 529 Growth Fund Disclosure Statement and the fund prospectus, which can be obtained from your financial professional or enlightenment529.xyz and should be read carefully before investing. As with all investments, there are risks posed by the fund and they are discussed in the Disclosure Statement.

Investors are encouraged to consult a tax professional. Enlightened Plan Services, LLC. Member FINRA.



Additional Information

Filing information

- Postcard filed September 3, 2019.
- Date of first use: August 26, 2019.
- Date of principal approval: August 26, 2019.




Disclosure Statement information

- Investing in the underlying funds entails investment risk, including the risks of fluctuating account values and the potential to lose money.
- Withdrawals must be used for qualified educational expenses or adverse tax consequences may result. For example, a 10% federal tax penalty will apply and earnings will be subject to federal and, if applicable, state income tax.
- Not all states conform to federal tax treatment for 529 Plans. In some states, 529 plan distributions used to pay for K-12 tuition are considered non-qualified and the earnings portion of the withdrawal is subject to state income tax and/or tax penalties. For instance, California imposes a 2.5% penalty on such withdrawals.
- With respect to rollovers, funds may be transferred from one 529 plan to another 529 plan for the same beneficiary without federal tax consequences, as long as the rollover is completed within 60 days of the distribution. 529 plan rollovers can only be completed once every 12 months for the same beneficiary. However, in many states, if the 529 plan account owner previously claimed a state income tax deduction or credit, the state income tax benefits attributable to the outbound rollover will be subject to recapture.

Communication No. 4: Email Blast

To: John Smith

Subject: Concerned About Your Investments Amidst Market Volatility?

 Reply  Reply All  Forward

Tempest Investments, LLC

Defend Your Assets Against Volatility

As You Like It Growth Fund



Bluestar Rating 4 of 5 Stars out of 895 Growth Funds for the 5-year period ending 9/30/2019.

Midsummer Night's Dream Fund



Bluestar Rating 5 of 5 Stars out of 699 Balanced Funds for the 5-year period ending 9/30/2019.

Watch Tempest Investments Portfolio Managers Robin Goodfellow and Othello Moor discuss how allocating your assets between the As You Like It Fund and the defensive Midsummer's Night's Dream Fund can provide capital preservation during times of market volatility while participating in the upside.



0:21 / 4:23

Keep Advice and Insights Coming from Tempest Investments

Subscribe now!



Please carefully consider the charges, risks, expenses and investment objectives of the Funds. This and other information is contained in the [prospectus](#), which should be read carefully before investing.

Investing involves risk such that account values may fluctuate based on market volatility and overall economic and market conditions.

Asset allocation is a strategy that seeks to mitigate, but there is no guarantee that it will protect against loss.

Bluestar Ratings are based on total return. The As You Like It Fund ratings for the 1 and 10-year periods were 2 and 4 star, respectively. The Midsummer Night's Dream Fund ratings for the 1 and 10-year periods were 4 and 4 stars, respectively.

Tempest Investments, LLC | Member FINRA

[Unsubscribe/Manager Subscriptions](#)

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Additional Information

Filing Information:

- Email was filed on October 10, 2019.
- Date of first use: October 10, 2019.
- Date of principal approval: October 10, 2019.
- Video was approved and first used October 10, 2019. It was not filed with FINRA.

Ranking information:

- Ratings are based on total return.
- Top 10% of funds receive 5 stars.
- Next 15% receive 4 stars.
- Next 30% receive 3 stars.
- Next 25% receive 2 stars.
- Remaining funds receive 1 star.

Additional information:



Tempest Investments LLC maintains a Chirper interactive social media site.



FINra[®]



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

General Brokerage and Supervision (Repeat Session)

Thursday, October 24, 2019

3:00 p.m. – 4:00 p.m.

Join FINRA staff and industry practitioners as they discuss advertising compliance and sales practice issues applicable to general brokerage firms and their registered representatives. Industry panelists explore advertising compliance challenges and how they address the advertising rules with respect to dually registered representatives, marketing materials created by third parties, and new investment products. This panel also covers current areas of interest such as private placements and consolidated reports.

Moderator: Stephanie Gregory
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Speakers: Mark Bleich
Principal Analyst, Advertising Regulation
FINRA Advertising Regulation

Joseph Fleming
Senior Vice President and Advice and Wealth Management Chief Compliance Officer
Ameriprise Financial

Cameron Hellewell
General Counsel
Orchard Securities, LLC

General Brokerage and Supervision Panelist Bios:

Moderator:

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.

Speakers:

Mark Bleich is Principal Analyst in FINRA's Advertising Regulation Department and has served in this role since 2001. Mr. Bleich began his career in securities regulation as an Analyst in NASD's Market Regulation Department in 1995. Prior to joining the organization, Mr. Bleich was employed by the federal government in the background investigation and security clearance fields. He has a B.A. from the University of Maryland and an M.A. from George Washington University. He also completed the Certified Regulatory and Compliance Professional™ (CRCP™) program through the FINRA Institute at Wharton.

Joe Fleming is Chief Compliance Officer for Advice and Wealth Management, joining Ameriprise in that role in October 2017. He is responsible for the overall strategy and operation of AWM Compliance, including Compliance Policy and Training, Broker-Dealer Operations and Financial Compliance Oversight, Surveillance, AML/Anti-Fraud, Field Office Inspections, Products and Services Compliance, and Licensing and Registration Compliance. Prior to joining Ameriprise, Mr. Fleming was Head, Business Risk (2017) and Chief Compliance Officer (2005-2016) for RBC Wealth Management. While at RBC, he also served in several other lead compliance roles, including for RBC US' mutual fund company, trust company and private bank. Prior to RBC, Mr. Fleming was Chief Compliance Officer for Piper Jaffray Companies/US Bancorp Piper Jaffray (1999-2005), where he also served as Director of Compliance for US Bancorp Asset Management, and US Bancorp Investments, its bank broker-dealer. He has the following securities licenses: Series 7, 63, 24, 4, 65, 8, 14, and 3, and a Minnesota insurance license (expired). Mr. Fleming frequently serves on FINRA and SIFMA committees, currently serving on FINRA's Membership Committee and SIFMA's Compliance and Regulatory Policy Committee, and previously serving on the FINRA/Securities Industry Council on Continuing Education, including one year as its Chair. He is a regular presenter at SIFMA and FINRA conferences. He is also an adjunct professor at the University of St. Thomas Law School, and a member of its Ethics and Compliance Program Advisory Committee. He previously taught at William Mitchell College of Law, and the Wharton School of Business / NASD Certificate Program for Compliance and Regulatory Professionals.

As General Counsel of Orchard Securities, LLC, **Cameron Hellewell's** responsibilities focus on working with Orchard's sponsor clients and its broker-dealer selling group members in connection with the offer and sale of securities, including alternative investments through both publicly-registered, non-traded programs and private placements. He also assists Orchard's Chief Compliance Officer with respect to Orchard's regulatory compliance, and works closely with Orchard's outside counsel and the legal counsel to sponsors on a wide range of issues. Prior to joining Orchard, Mr. Hellewell's professional experience includes working for an international commercial real estate company, and a commercial real estate development company that developed assisted living centers, retail projects and office buildings. Mr. Hellewell earned his bachelor's degree from the University of Utah and his juris doctorate from the Case Western Reserve University School of Law. He is also a member of the Utah State Bar, the District of Columbia Bar, and the American Bar Association.



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

General Brokerage and Supervision

Thursday, October 24, 2019

1:45 p.m. – 2:45 p.m.

Join FINRA staff and industry practitioners as they discuss advertising compliance and sales practice issues applicable to general brokerage firms and their registered representatives. Industry panelists explore advertising compliance challenges and explain how they address the advertising rules with respect to the creation and preparation of marketing materials, supervision, dually registered representatives, and seminar and radio shows. This panel also covers current areas of interest such as private placements and consolidated reports.

Moderator: Stephanie Gregory (Moderator)
Principal Analyst
FINRA Advertising Regulation

Panelists: Mark Bleich
Principal Analyst
FINRA Advertising Regulation

Joe Fleming
Chief Compliance Officer, Advice and Wealth Management
Ameriprise Financial

Cameron Hellewell
General Counsel
Orchard Securities

- I. Introduction
- II. General Firm Compliance
 - a. Overview of Firm and Structure of Compliance Department
 - b. Development of Marketing Material and Campaigns
 - c. Compliance Involvement in the Marketing Process
 - d. Lifecycle of a Communication
 - e. Compliance ChallengesUnique Communications
 - a. Complex Product Review—What to look for?
 - b. Biggest Obstacles
 - c. Staff training
- III. Dually Registered Broker-Dealer/Investment Advisor Representatives
 - a. Biggest challenges
 - b. SupervisionSocial Media
 - a. Personal and/or Business Use

- b. Supervision

Seminars and Radio Shows

- a. Content Control
- b. Scripted vs. Unscripted
- c. Training and Supervision

IV. Consolidated Reports

- a. Efficient Practices
- b. Areas of Concern

Registered Representative Considerations

- a. Designations
- b. Awards
- c. Titles and Business Group Names

Foreign Language Communications

- a. Certified Translation
- b. Offering Document

V. Wrap-up/Questions



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

General Brokerage and Supervision

Panelists

■ Moderator

- **Stephanie Gregory, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**

■ Panelists

- **Mark Bleich, Principal Analyst, Advertising Regulation, FINRA Advertising Regulation**
- **Joseph Fleming, Senior Vice President and Advice and Wealth Management Chief Compliance Officer, Ameriprise Financial**
- **Cameron Hellewell, General Counsel, Orchard Securities, LLC**

General Compliance – The Firm's Perspective

- Overview of Firm and Structure
- Development of Marketing Material and Campaigns
- Compliance Involvement in the Marketing Process
- Lifecycle of a Communication
- Importance of Proper Supervision
- Compliance Challenges

Unique Communications

- **Complex Product Review—What to look for?**
- **Biggest Obstacles**
- **Staff Training**

Dually Registered BD / IA Representatives

- **Review and Approval Process**
- **Regulatory Challenges**
- **Supervision**

Social Media

- **Registered Representatives' Use of Social Media**
- **Process for Reviewing, Supervising, and Approving**
- **Biggest Firm Concerns and Challenges**
- **Record Retention**
- **Registered Representative Websites**

Seminars and Radio Shows

■ Content Control

- Providing Pre-Approved Content
- Registered Representative Created Content

■ Scripted vs. Unscripted

■ Considerations for Client Events

■ Training and Supervision

Consolidated Reports

■ How Consolidated Reports are Created

- In House
- Outsourced
- Software

■ Effective Practices

■ Areas of Concern

Registered Representative Considerations

■ How Registered Representatives Promote Themselves

- Designations
- Awards
- Titles
- Business Group Names

Foreign Language Communications

- **The Firm Process**
- **Supervision and Review**
- **Certified Translation**
- **Offering Document**



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Questions and Answers



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

General Brokerage and Supervision (Repeat Session)

Thursday, October 24, 2019

3:00 p.m. – 4:00 p.m.

Resources

FINRA Regulatory Notices

- FINRA Regulatory Notice 19-31, *Disclosure Innovations in Advertising and Other Communications* (September, 2019)

www.finra.org/rules-guidance/notices/19-31

- FINRA Regulatory Notice 17-18, *Social Media and Digital Communications, Guidance on Social Networking Websites and Business Communications* (April 2017)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-18.pdf

- FINRA Regulatory Notice 15-50, *BrokerCheck, SEC Approves Rule Requiring Members' Websites to Include a Readily Apparent Reference and Hyperlink to BrokerCheck* (December, 2015)

www.finra.org/sites/default/files/Notice_Regulatory_15-50.pdf

- FINRA Regulatory Notice 15-32, *Regulation A Offerings, Filing Requirements and Review of Regulation A Offerings* (September, 2015)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-32.pdf

- FINRA Regulatory Notice 15-31, *Debt Research. SEC Approves Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Debt Research Reports* (August 2015)

www.finra.org/sites/default/files/Regulatory-Notice-15-31_0.pdf

- FINRA Regulatory Notice 15-30, *Equity Research. SEC Approves Consolidated Rule to Address Conflicts of Interest Relating to the Publication and Distribution of Equity Research Reports* (August 2015)

www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-15-30.pdf

- FINRA Regulatory Notice 15-02, *Values of DPP and Unlisted REIT Securities, SEC Approves Amendments to FINRA Rule 2310 and NASD Rule 2340 to Address Values of Direct Participation Program and Unlisted Real Estate Investment Trust Securities* (April, 2016)

www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-02.pdf

- FINRA Regulatory Notice 13-45, *Rollovers to Individual Retirement Accounts, FINRA Reminds Firms of Their Responsibilities Concerning IRA Rollovers* (December 2013)

www.finra.org/sites/default/files/NoticeDocument/p418695.pdf

- *FINRA Regulatory Notice 13-23, Brokerage and Individual Retirement Account Fees, FINRA Provides Guidance on Disclosure of Fees in Communications Concerning Retail Brokerage Accounts and Individual Retirement Accounts* (July 2013)
www.finra.org/sites/default/files/NoticeDocument/p304670.pdf
- *FINRA Regulatory Notice 13-18, Communication With the Public, FINRA Provides Guidance on Communications With the Public Concerning Unlisted Real Estate Investment Programs* (May 2013)
www.finra.org/sites/default/files/NoticeDocument/p253836.pdf
- *FINRA Regulatory Notice 12-29, Communications with the Public, SEC Approves New Rules Governing Communications With the Public* (June 2012)
www.finra.org/sites/default/files/NoticeDocument/p127014.pdf
- *FINRA Regulatory Notice 12-03, Complex Products, Heightened Supervision of Complex Products* (January 2012)
www.finra.org/sites/default/files/NoticeDocument/p125397.pdf
- *FINRA Regulatory Notice 11-39, Social Media Websites and the Use of Personal Devices for Business Communications. Guidance on Social Networking Websites and Business Communications, Guidance on Social Networking Websites and Business Communications* (August 2011)
www.finra.org/sites/default/files/NoticeDocument/p124186.pdf
- *FINRA Regulatory Notice 10-52, Application of Rules on Communications With the Public and Institutional Sales Material and Correspondence to Certain Free Writing Prospectuses* (October 2010)
www.finra.org/sites/default/files/NoticeDocument/p122310.pdf
- *FINRA Regulatory Notice 10-51, Commodity Futures-Linked Securities, Sales Practice Obligations for Commodity Futures-Linked Securities* (October 2010)
www.finra.org/sites/default/files/NoticeDocument/p122289.pdf
- *FINRA Regulatory Notice 10-19, Consolidated Reports, FINRA Reminds Firms of Responsibilities When Providing Customers With Consolidated Financial Account Reports,* (April 2010)
www.finra.org/sites/default/files/NoticeDocument/p121253.pdf
- *FINRA Regulatory Notice 10-09, Reverse Convertibles, FINRA Reminds Firms of Their Sales Practice Obligations With Reverse Exchangeable Securities (Reverse Convertibles)* (February 2010)
www.finra.org/sites/default/files/NoticeDocument/p120920.pdf
- *FINRA Regulatory Notice 10-06, Social Media Web Sites, Guidance on Blogs and Social Networking Web Sites* (January 2010)
www.finra.org/sites/default/files/NoticeDocument/p120779.pdf

- *FINRA Regulatory Notice 08-82, Cash Alternatives, FINRA Reminds Firms of Their Sales Practice Obligations with Regard to Cash Alternatives* (December 2008)
www.finra.org/sites/default/files/NoticeDocument/p117559.pdf
- *FINRA Regulatory Notice 08-81, High Yield Securities, FINRA Reminds Firms of Their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment* (December 2008)
www.finra.org/sites/default/files/NoticeDocument/p117558.pdf
- *FINRA Regulatory Notice 08-77, Customer Account Statements, FINRA Provides Guidance on Estimated Annual Income and Estimated Yield* (December 2008)
www.finra.org/sites/default/files/NoticeDocument/p117530.pdf
- *FINRA Regulatory Notice 08-27, The Obligation of Firms When Supervising their Registered Representatives' Use of Marketing Materials to Establish Expertise* (May 2008)
www.finra.org/sites/default/files/NoticeDocument/p038522.pdf
- *FINRA Regulatory Notice 07-43, FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve these Customers* (September 2007)
www.finra.org/sites/default/files/NoticeDocument/p036816.pdf
- *Notice to Members 05-59, Structured Products, NASD Provides Guidance Concerning the Sale of Structured Products* (September 2005)
www.finra.org/sites/default/files/NoticeDocument/p014997.pdf
- *Notice to Members 04-30 Sales Practice Obligations, FINRA Reminds Firms of Sales Practice Obligations In Sale of Bonds and Bond Funds* (April 2004)
www.finra.org/sites/default/files/NoticeDocument/p003130.pdf

Investor Alerts

- *The IRA Rollover: 10 Tips to Making a Sound Decision* (January 2014)
www.finra.org/investors/alerts/ira-rollover-10-tips-making-sound-decision
- *Municipal Bonds—Important Considerations for Individual Investors* (April 2013)
www.finra.org/investors/alerts/municipal-bonds-important-considerations-individual-investors
- *Duration What an Interest Rate Hike Could Do to Your Bond Portfolio* (February 2013)
www.finra.org/investors/alerts/duration-what-interest-rate-hike-could-do-your-bond-portfolio
- *Exchange-Traded Notes—Avoid Unpleasant Surprises* (July 2012)
www.finra.org/investors/alerts/exchange-traded-notes-avoid-unpleasant-surprises

- *The Grass Isn't Always Greener Chasing Return in a Challenging Investment Environment* (July 2011)
www.finra.org/investors/alerts/grass-isnt-always-greener-chasing-return-challenging-investment-environment
- *Structured Notes With Principal Protection: Note the Terms of Your Investment* (June 2011)
www.finra.org/investors/alerts/structured-notes-principal-protection-note-terms-your-investment
- *Reverse Convertibles – Complex Investment Vehicles* (February 2010)
www.finra.org/investors/alerts/reverse-convertibles-complex-investment-vehicles
- *"Free Lunch" Investment Seminars—Avoiding the Heartburn of a Hard Sell* (September 2007)
www.finra.org/investors/alerts/free-lunch-investment-seminars-avoiding-heartburn-hard-sell

Other Resources

- *FDIC Consumer News, Market-Linked CDs: Don't Let the Possibility of Higher Returns Cloud Your View of the Potential Risks* (Spring 2012)
www.fdic.gov/consumers/consumer/news/cnspr12/marketlinkedcds.html



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Variable Insurance Products – Regulatory Overview and New Developments

Thursday, October 24, 2019

3:00 p.m. – 4:00 p.m.

Panelists from FINRA and the industry conduct this interactive session—first with a brief overview of the essentials for creating compliant communications, followed by a discussion of specific areas that frequently raise questions and regulatory challenges. The panelists also explore new regulatory developments and innovations in the structure of contracts and investment options, along with how firms address the compliance challenges raised by the marketing of variable insurance products.

Moderator: Pramit Das
Associate Director, Technology
FINRA Advertising Regulation

Speakers: Richard Choi
Shareholder
Carlton Fields

Joseph George
Associate Director, Advertising Regulation
FINRA Advertising Regulation

James Nemecek
Director, Advertising Compliance
AXA Equitable

Variable Insurance Products – Regulatory Overview and New Developments Panelist Bios:

Moderator:

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.

Speakers:

Richard Choi has extensive experience advising investment companies, investment advisers, broker-dealers, and life insurance companies on federal and state securities and insurance compliance and regulatory matters. Mr. Choi's experience includes advising investment company boards, independent directors and trustees, and special committees of directors and trustees. He counsels clients on the development and distribution of sophisticated financial products, such as variable annuities, variable life insurance, and face-amount certificates. His experience also includes representation of investment advisers and investment companies in regulatory compliance inspections and examinations, opinions on the availability of 1940 Act exemptions in connection with various types of transactions, and in-house training and education seminars on a variety of regulatory and compliance matters. He has published numerous articles and regularly speaks on federal securities issues relating to variable insurance products and mutual funds. He has appeared on Bloomberg TV and has been quoted in *Bloomberg*, the *Chicago Tribune*, the *Los Angeles Times*, *National Underwriter*, *U.S. Banker*, the *Wall Street Journal Online*, and other financial and trade publications. Mr. Choi is the securities and investment companies industry group co-leader. Mr. Choi earned a B.A. from the University of Chicago and a J.D. from the University of Virginia School of Law.

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.

James Nemecek is Director of Advertising Compliance at AXA Equitable Life Insurance Company (AXA Equitable). Based in Charlotte, Mr. Nemecek manages a team of six full-time reviewers who work closely with field and corporate submitters in reviewing, revising, negotiating and ultimately providing registered principal approval of all retail communications and internal training content generated by, and in support of, AXA Equitable's affiliated retail and wholesale broker-dealers, AXA Advisors, LLC and AXA Distributors, LLC. Prior to joining AXA Equitable in 2004, Mr. Nemecek spent a combined total of 11 years in advertising compliance roles with Metropolitan Life Insurance Company, The MONY Group and The Guardian Life Insurance Company of America, respectively.



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Variable Insurance Products – Regulatory Overview and New Developments

Thursday, October 24, 2019

3:00 p.m. – 4:00 p.m.

Panelists from FINRA and the industry conduct this interactive session—first with a brief overview of the essentials for creating compliant communications, followed by a discussion of specific areas that frequently raise questions and regulatory challenges. The panelists also explore new regulatory developments and innovations in the structure of contracts and investment options, along with how firms address the compliance challenges raised by the marketing of variable insurance products.

Moderator: Pramit Das (Moderator)
Associate Director
FINRA Advertising Regulation

Panelists: Richard T. Choi
Shareholder
Carlton Fields

James Nemecek
Director, Advertising Compliance
AXA Equitable

Joseph S. George
Associate Director
FINRA Advertising Regulation

Introduction

- I. How to create compliant advertising
- II. Complex on-going issues
- III. Recent areas of regulatory interest
- IV. Structure of the advertising review process
- V. Common compliance challenges faced
- VI. How the firm addresses revision requests
- VII. Development and marketing of new products and features
- VIII. Social media: branding versus promotion
- IX. How does Regulation BI impact what is said and how it's said?
- X. Guidance on novel issues raised by firms
- XI. Successful review process

Wrap-up

- I. Q and A: from the audience as well as prepared questions



2019 Advertising Regulation Conference

October 24 – 25, 2019 | Washington, DC

Variable Insurance Products – Regulatory Overview and New Developments

Panelists

■ Moderator

- **Pramit Das, Associate Director, Technology, FINRA Advertising Regulation**

■ Panelists

- **Richard Choi, Shareholder, Carlton Fields**
- **Joseph George, Associate Director, Advertising Regulation, FINRA Advertising Regulation**
- **James Nemecek, Director, Advertising Compliance, AXA Equitable**

How To Create A Variable Product Communication

■ Content

- Identify the product.
- Provide a sound basis to evaluate the product.
- Address risks, fees, tax issues, and potential penalties, as needed.
- Clearly explain how riders work, if applicable.
- Disclose limitations of any guarantees mentioned.
- Balance any discussion of investment features of VLI with a discussion of the insurance component.
- Disclose the long-term nature of a VA.

How To Create A Variable Product Communication

■ Performance

- **Variable Annuities:**

- SEC performance standards apply.
- Must be net of all recurring and non-recurring fees and expenses.
- Returns must be keyed off inception date of separate account.

How To Create A Variable Product Communication

■ Performance

- **Variable Life:**

- SEC performance standards do not apply.
- Apply FINRA Rule 2210(d)(1)(A).
- At a minimum, deduct investment option management fees.
- Prominently disclose fees/charges deducted and not deducted
- Disclose that the performance would have been lower if all fees and charges had been deducted.

Rubric for Predated Variable Annuity Performance

■ Can we show...

- **(A) Separate account onward?**

- YES, BUT – Deduct fees and charges

Disclose CDSC

- **(B) Predating separate account?**

- YES, BUT – Deduct Fees and charges

Disclose CDSC

Must also show (A)

- **(C) Predating separate account without fees and charges?**

- YES, BUT – Must also show (A) and (B)

Complex On-Going Issues

■ Supplemental Hypothetical Illustrations:

- Weighted Average Expenses
- Random Rate
- Split Annuity
- Rider
- Historical Performance

Complex On-Going Issues

■ Structured Investment Options

- Crediting Methods
- Caps & Buffers

■ Registered Index Linked Annuity (RILA)

■ Alternative Investments

- Leveraged ETFs

■ Taxable vs Tax-Deferred Comparisons

Areas of Regulatory Interest

- **Interpretive Guidance – Related Performance**
- **Variable Annuity Summary Prospectus**
- **Senior Concerns**
- **1035 Exchanges**
- **Example that led to Formal Action**

Our Advertising Compliance Team

Six full-time reviewers and three part-time reviewers

- Registered principals with our retail and wholesale broker-dealers
- Specifically-focused: proprietary product, retail field-generated, corporate marketing content
- Flexible, experienced, versatile
- Effective communicators
- Seek the achievable balance between effective marketing and good compliance
- *Always!*



What We Do ...

Roughly 11,000 submissions per year:

- Proprietary variable product content – *sales kits, brochures, illustration templates, seminar decks, web content ...*
 - Seminars
 - Letters
 - Invitations
 - Videos
 - Infomercials
 - Radio & television advertising
 - Press releases
 - E-mail marketing
 - All web content
 - ***Social Media!!***
- 





How we do it

Interactive electronic platform

- Accommodates even large files created in a wide variety of software programs
- Central advertising compliance queue for reviewer assignment, review, revisions, final approval, and 17a-4 WORM-compliant recordkeeping
- Retains the original submission, all mark-ups and iterations, final approved version, all related communications, sign-offs and other reference material

Why?

We do it to ensure content that complies with ...

- ✓ *State, federal and regulatory requirements*
- ✓ *Our own the policies, procedures and high standards*

We do it because we want our customers to know what they're buying ... and why.



Challenges ...

We're not selling Hula Hoops!

- We're using written content to market complex investment products to customers with presumably little or no related background
- We're making sure that our customers fully understand the options, features, costs, risks, objectives and the ultimate benefits of what they're buying – *before they buy*



A silhouette of a person pushing a large sphere up a hill, symbolizing the challenges of a project.

Challenges

- Submitter turnover
- Competing submitter priorities
- Product design developments (moving targets)
- *Consistency, consistency, consistency*
- Overlapping initiatives
- Industry competition
- Subjectivity and interpretation
- Friction between “compliance” and “business”
- Outside vendors
- Social media, digital communication

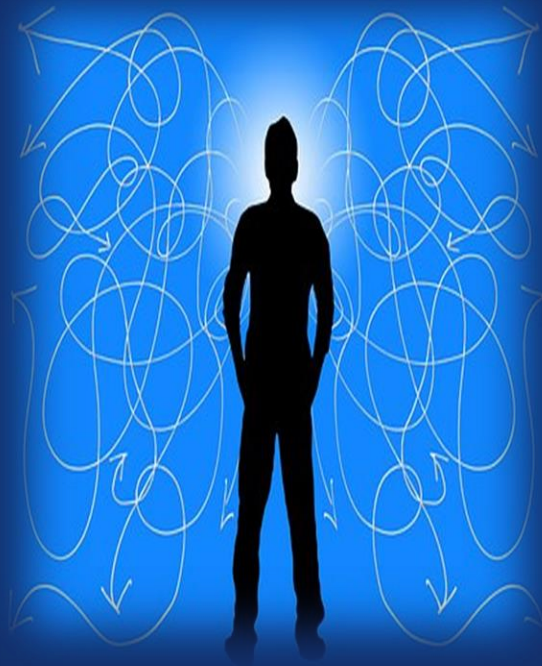
Our Advertising Regulation Filings

Wide variety of variable annuity and variable life insurance contracts ...

- Offered directly to investors through our affiliated retail broker-dealer
- Offered by our peer companies through our affiliated wholesale broker-dealer

We file lots of stuff!

- ❖ FINRA's subjective assessment of whether our content appears consistent with applicable standards
- ❖ Our mission for each filing: *The “clean” Review Letter*
- ❖ Comments? We re-group, re-write, re-approach, and often re-file
- ❖ FINRA's agreement that we appear to be meeting applicable standards is valuable because ...
 - 1) We're a member firm
 - 2) Third-party firms through which we offer our variable products generally expect to see a “clean” letter



When we get comments

Our goal for every filing is a “clean” Review Letter, but ...

If revisions are necessary (assuming a file-and-use)

- Suspend our approval
- Interpret the comments and amend the material accordingly
- Re-file for a “clean” Review Letter *if*...
 - ✓ The piece will be distributed through our wholesale B/D or,
 - ✓ We want to be sure that we’ve correctly interpreted and fully addressed the Letter’s concerns
- If neither applies, we will re-approve the amended content for resumed use

Do Not Use (rare)

- Rescind any approval as a file-and-use filing
- Entirely revisit the material to determine whether appropriate amendments are even possible.
- Re-file toward a “clean” letter on a requested *expedited* basis or as a *regular* filing.

Securities Act §12 Civil Liabilities

Applies to prospectuses and oral communications that:

- contain untrue statements of a **material** fact
- omit a **material** fact necessary to make the statements, in light of the circumstances under which they were made, not misleading

Materiality

SEC Rule 405 definition:

“The term *material*, when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a **substantial likelihood** that a **reasonable investor** would attach **importance** in determining whether to purchase the security registered.”

Materiality

What might be material?

- Accuracy of performance
- Contributors to performance
- Fees and charges
- Risks
- Product guarantees and features
- Assumptions used in illustrations

Social Media **Considerations:**

1. Advertising/Branding vs.
Solicitation/Recommendation
2. Influencers and Promoters
3. Static vs. Interactive Content

SEC Regulation Best Interest Considerations

1. Differentiation of BD vs IA Services
2. Consistency with Reg BI Disclosures
3. De Facto Recommendations

Successful Review Process

- P**repare early
- R**eview iteratively
- A**pprove appropriately
- M**ake filings completely
- I**nclude partners broadly
- T**rain and educate continually



2019 Advertising Regulation Conference

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Question and Answers



2019 Advertising Regulation Conference

October 24—25 | Washington, DC

Plenary Session III – Investor Education and Financial Capability

Thursday, October 24, 2019

4:15 p.m. – 5:00 p.m.

Join FINRA staff as they discuss the state of the U.S. Financial Capability Study and how innovations, financial education offerings and changes in the economy may impact the financial decisions and behaviors of millions of Americans.

Introduction: Thomas Pappas
Vice President, Advertising Regulation
FINRA Advertising Regulation

Speakers: Gary Mottola
Director of Research
FINRA Investor Education Foundation

Gerri Walsh
President, FINRA Investor Education Foundation and Senior Vice President, FINRA
Investor Education
FINRA Office of Investor Education

Plenary Session III – Investor Education and Financial Capability Panelist Bios:

Introduction:

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.

Speakers:

Gary R. Mottola is the research director for the FINRA Investor Education Foundation and a social psychologist with more than 25 years of research experience. In his role at the FINRA Foundation, he oversees and conducts research projects aimed at better understanding financial capability in America, protecting investors from financial fraud, and improving financial disclosure statements. Dr. Mottola received his B.A. from the University at Albany, M.A. from Brooklyn College, and Ph.D. from the University of Delaware. He was a visiting scholar at Wharton in 2006 and is an adjunct professor of statistics in Villanova University's MBA program.

Gerri Walsh is Senior Vice President of Investor Education at the Financial Industry Regulatory Authority (FINRA). In this capacity, she is responsible for the development and operations of FINRA's investor education program. She is also President of the FINRA Investor Education Foundation, where she manages the Foundation's strategic initiatives to educate and protect investors and to foster financial capability for all Americans, especially underserved audiences. She joined FINRA in May 2006. Prior to joining FINRA, Ms. Walsh was Deputy Director of the Securities and Exchange Commission's Office of Investor Education and Assistance (OIEA) and, before that, Special Counsel to the Director of OIEA. She also served as a senior attorney in the SEC's Division of Enforcement, investigating and prosecuting violators of the federal securities laws. Before that, she practiced law as an associate with Hogan Lovells in Washington, D.C. Ms. Walsh was the founding executive sponsor of FINRA's Military Community Employee Resource Group and leads FINRA's Corporate Social Responsibility efforts. She serves on the Advisory Council to the Stanford Center on Longevity and represents FINRA on IOSCO's standing policy committee on retail investor education, the Jump\$tart Coalition for Personal Financial Literacy, NASAA's Senior Investor Advisory Council and the Wharton Pension Research Council. Ms. Walsh received her J.D. from N.Y.U. School of Law and her B.A., *magna cum laude*, from Amherst College. She is a member of the New York and District of Columbia bars.



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Gerri Walsh
President, FINRA Investor Education Foundation and Senior Vice President, FINRA Investor Education
FINRA Office of Investor Education

Timed Agenda:

- I. Introduction
- II. Background
 - a) About the NFCS
 - b) What is Financial Capability?
 - c) Setting the Stage—the Economy
- III. The Big Picture
 - a) The “New Normal”?
 - b) Widening gaps in financial capability
- IV. Financial Anxiety in America
 - a) Overall
 - b) Women and financial anxiety
 - c) What’s driving financial anxiety?
 - i. Student loans
 - ii. Financial fragility
 - iii. Dependents
 - iv. Medical costs
 - v. Savings/debt
- V. Financial Literacy and Financial Education
 - a) Financial literacy levels are falling, but why?
 - b) The Gender gap
 - c) Financial education can help

VI. The Financial Knowledge and Characteristics of Investors

- a) Active vs. work-place only investors
- b) Early results from our Investor Knowledge Quiz

VII. Wrap up and Q&A



Investor Education & Financial Capability

2019 FINRA Advertising Regulation Conference

Gerri Walsh & Gary R. Mottola

October 24, 2019

Agenda

1 Setting the Stage

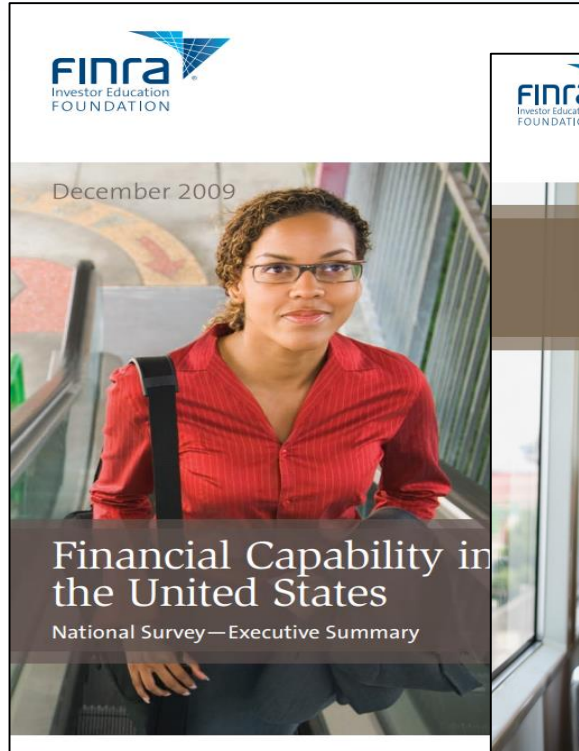
2 The Big Picture

3 Financial Anxiety in America—And What's Driving It

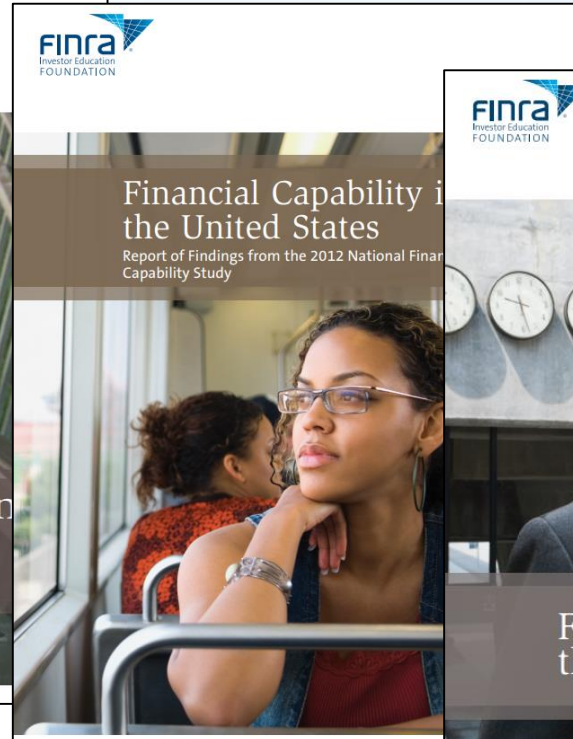
4 Financial Literacy and Financial Education

About the NFCS

2009



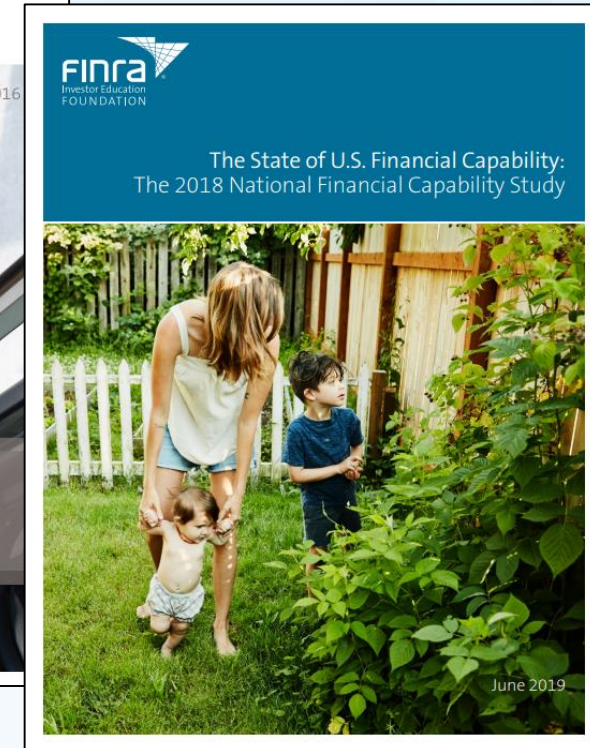
2012



2015



2018

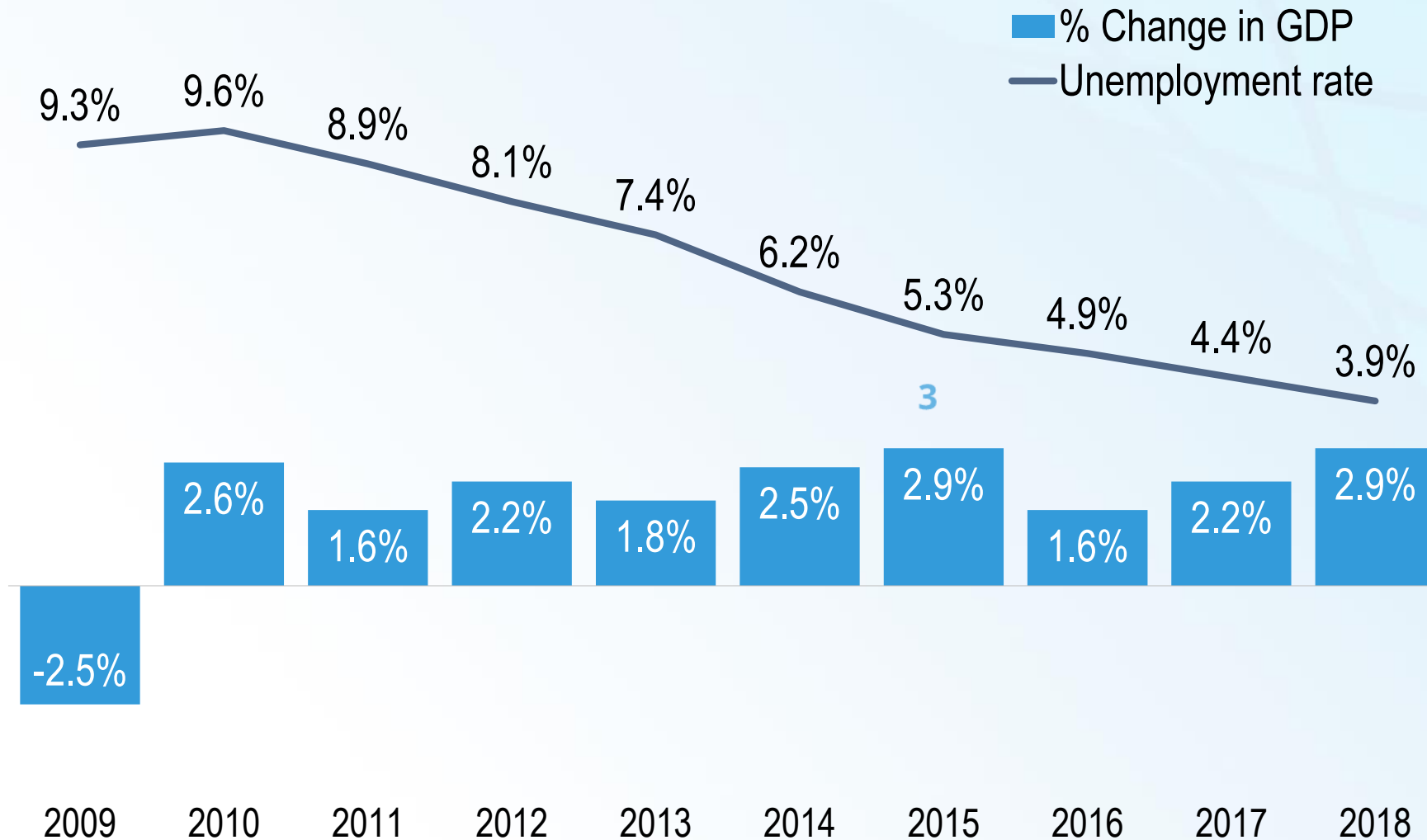


What is Financial Capability?

“Financial capability is a multi-dimensional concept that encompasses a combination of knowledge, resources, access, and habits”.

1. Making Ends Meet
2. Planning Ahead
3. Managing Financial Products
4. Financial Knowledge

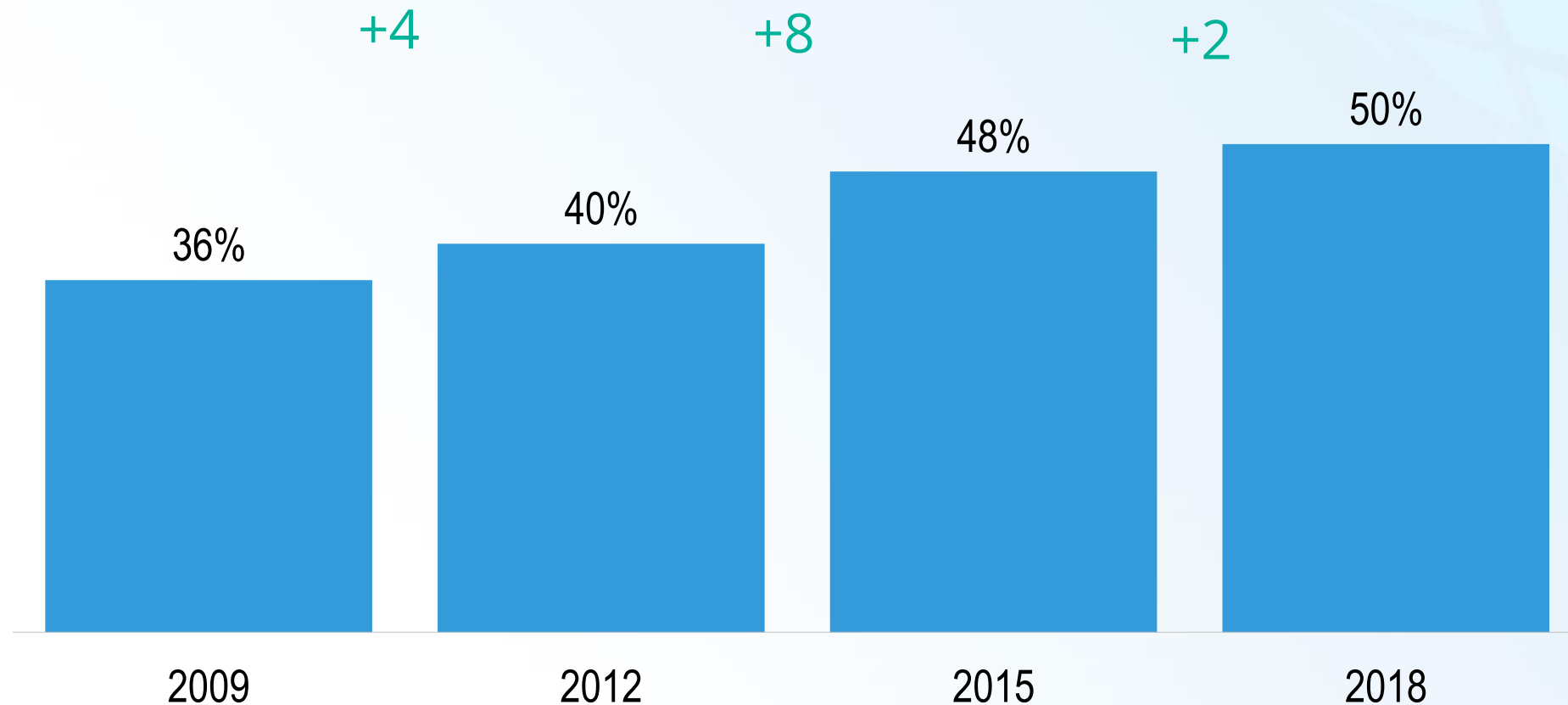
The Economic Backdrop



*GDP figures from U.S. Dept. of Commerce, unemployment figures from U.S. Dept. of Labor

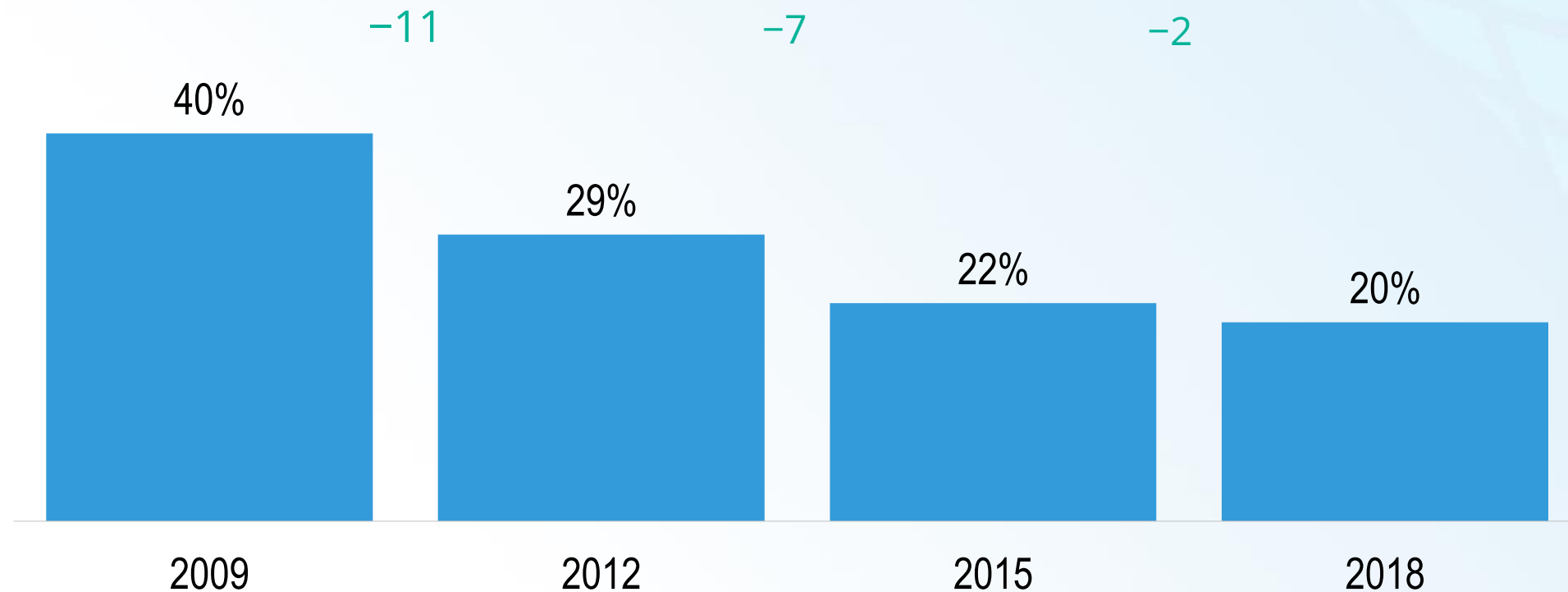
Capability Lagging Economic Growth

Find it not at all difficult covering expenses and paying bills



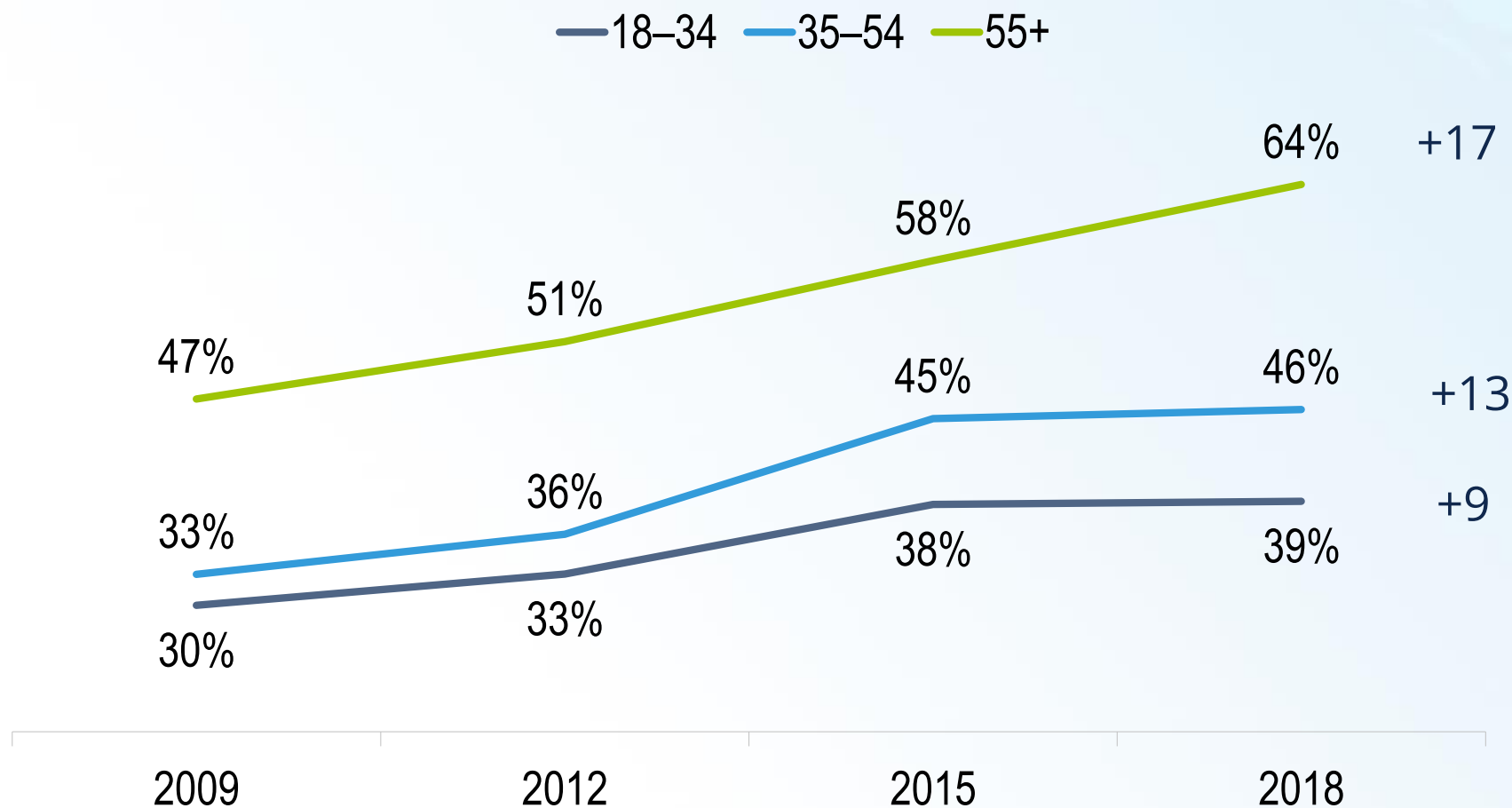
Ability to Make Ends Meet Leveling Off

Have experienced unexpected income drop



Widening Gap by Age

Find it **NOT** difficult covering expenses and paying bills



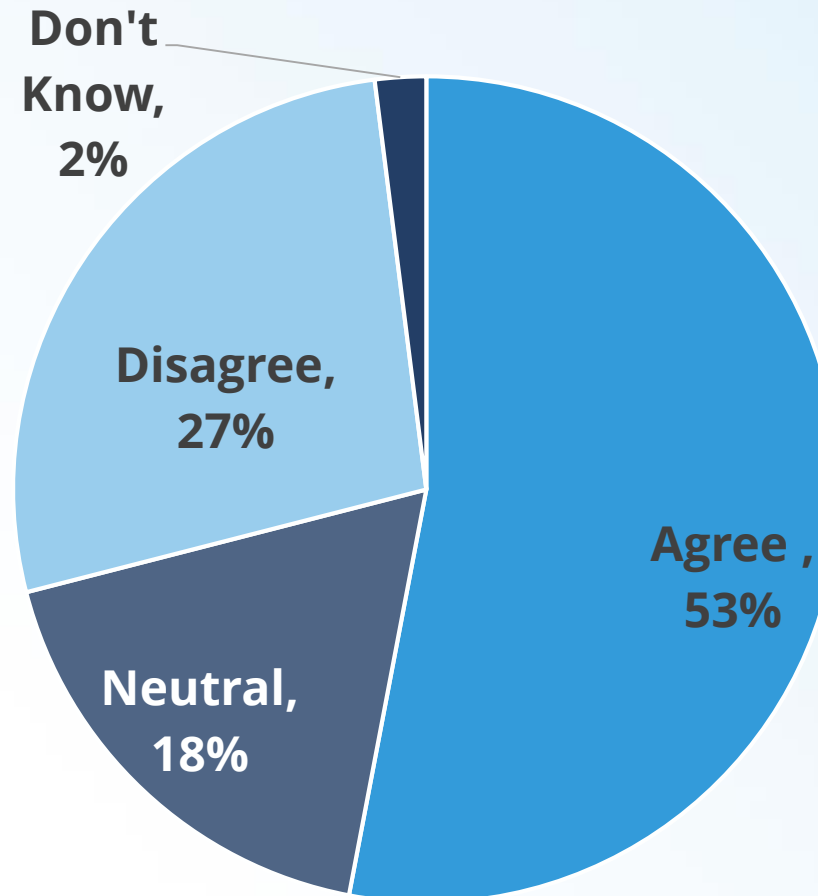
Some Groups Falling Behind

Spend less than income

	2009	2012	2015	2018	Change from 2009 to 2018
White	42%	41%	41%	42%	0%
African-American	40%	39%	36%	34%	-6%
Hispanic	42%	41%	41%	39%	-3%
Asian-American	48%	49%	45%	46%	-2%

Financial Anxiety in America

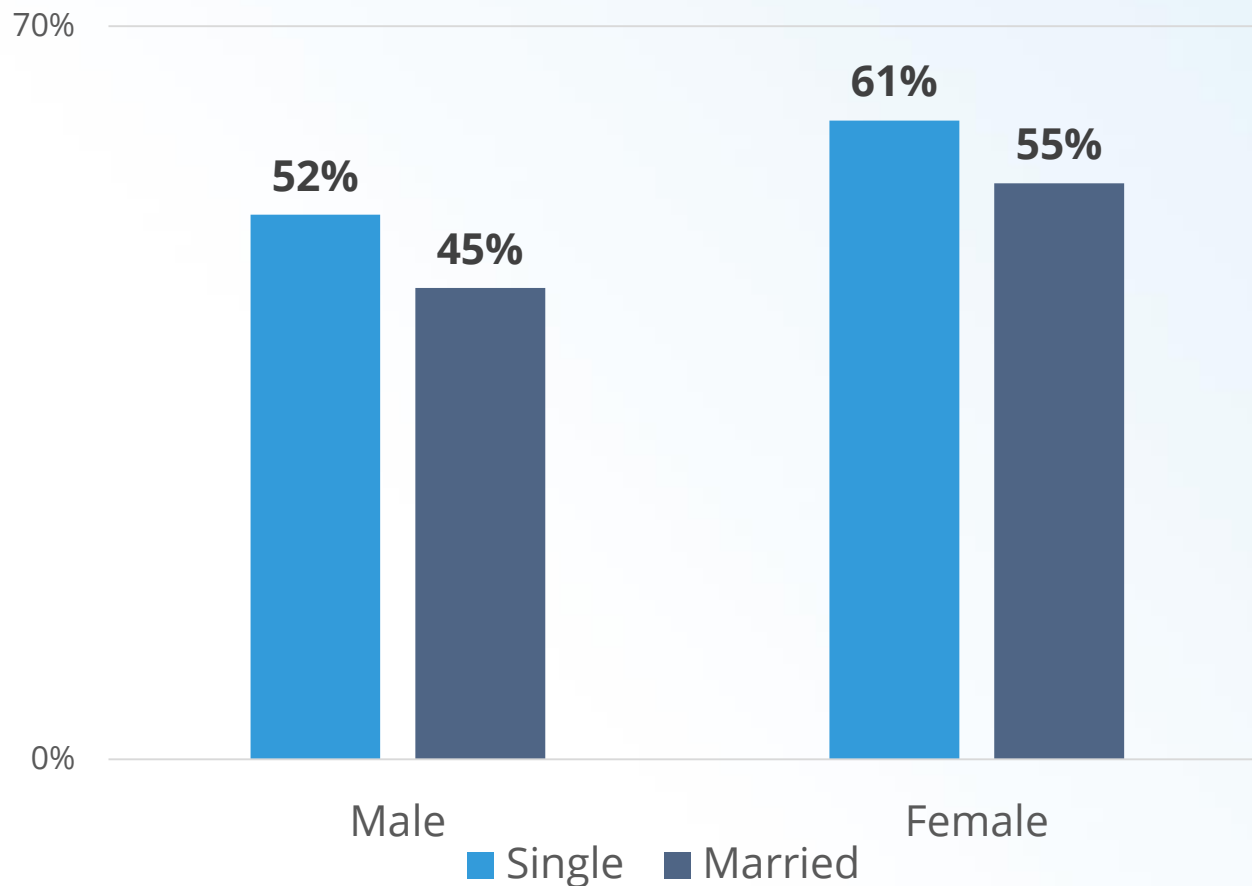
“Thinking about my personal finances can make me feel anxious.”



**Over half
feel anxious**

Gender and Financial Anxiety

“Thinking about my personal finances can make me feel anxious.”



Forever in Your Debt

Among student loan holders with payments due:

42% have been late with payments

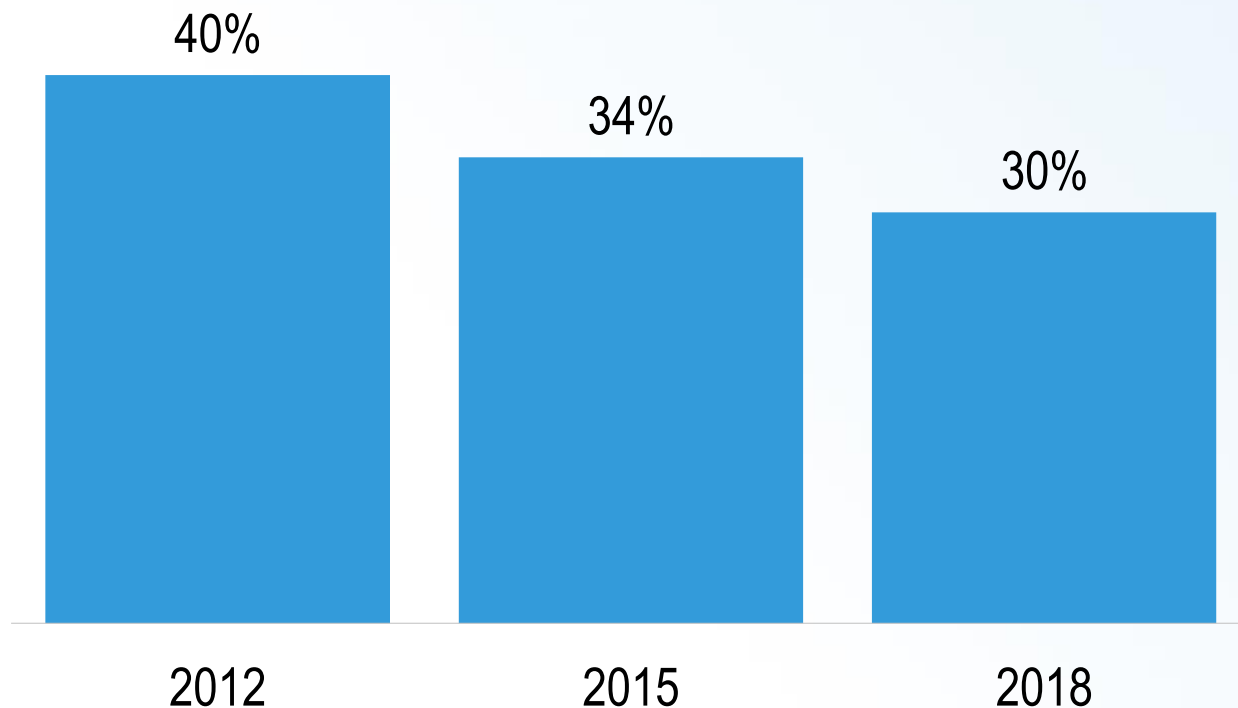
48% are worried they won't be able to pay off their loan

47% wish they had gone to a less expensive school



Financial Fragility

% who probably or definitely could NOT come up with \$2,000 in 30 days in the event of an emergency



Medical Cost Difficulties

Because of cost:

17% did not fill a prescription for medicine

19% skipped recommended medical tests, treatment or follow-up

21% who had a medical problem did not go to a doctor or clinic

	Gender		Age			Income		
	Male	Female	18-34	35-54	55+	<\$25K	\$25-75K	\$75K+
Had medical cost difficulties	26%	32%	41%	32%	17%	36%	32%	21%

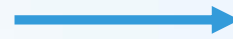
The High Cost of Kids

	Dependent Children	No Dependent Children	Difference
"Thinking about my personal finances can make me feel anxious."	61%	48%	13 Points
Medical Cost Difficulties	38%	25%	13 Points
Worry about Running Out of Money in Retirement	58%	47%	11 Points

Can Americans Save?

Nearly **half** have
emergency
savings

Up sharply since 2009



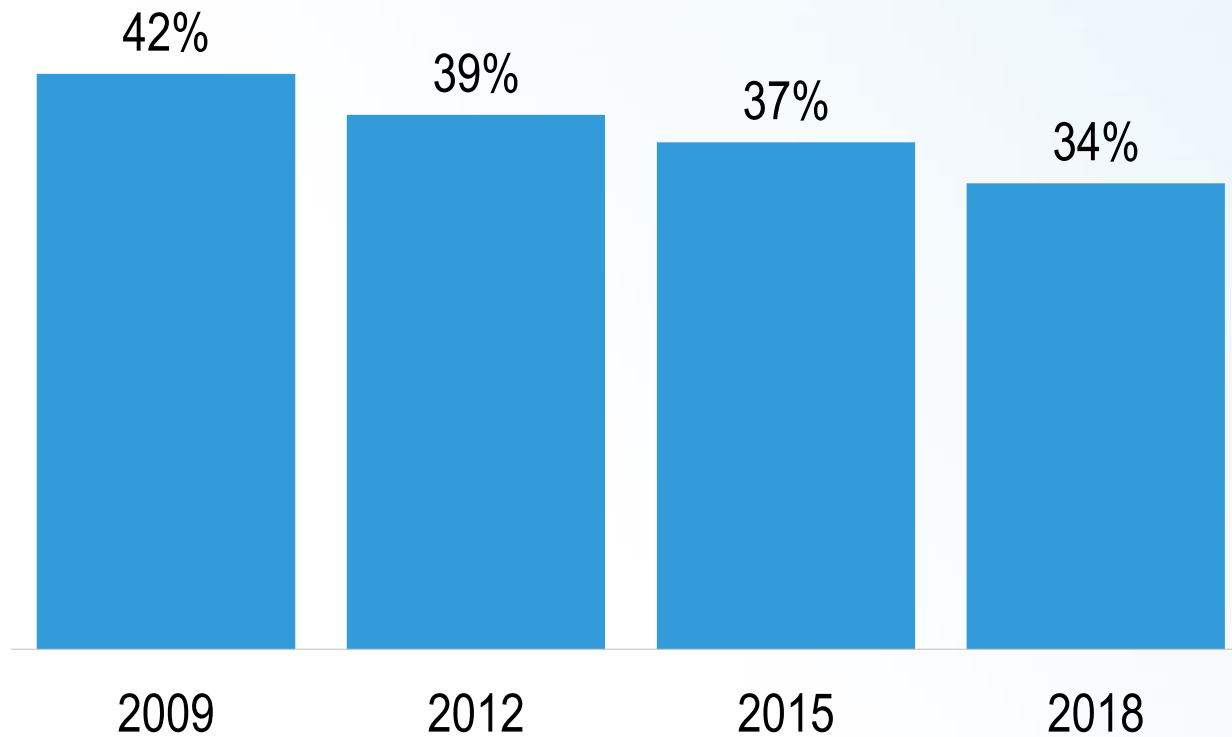
Among those with
incomes below
\$25K the figure falls
to **23%**

Dropped since 2009

About **6 in 10** have retirement savings accounts
Flat since 2009

Falling Financial Literacy

% High Financial Literacy

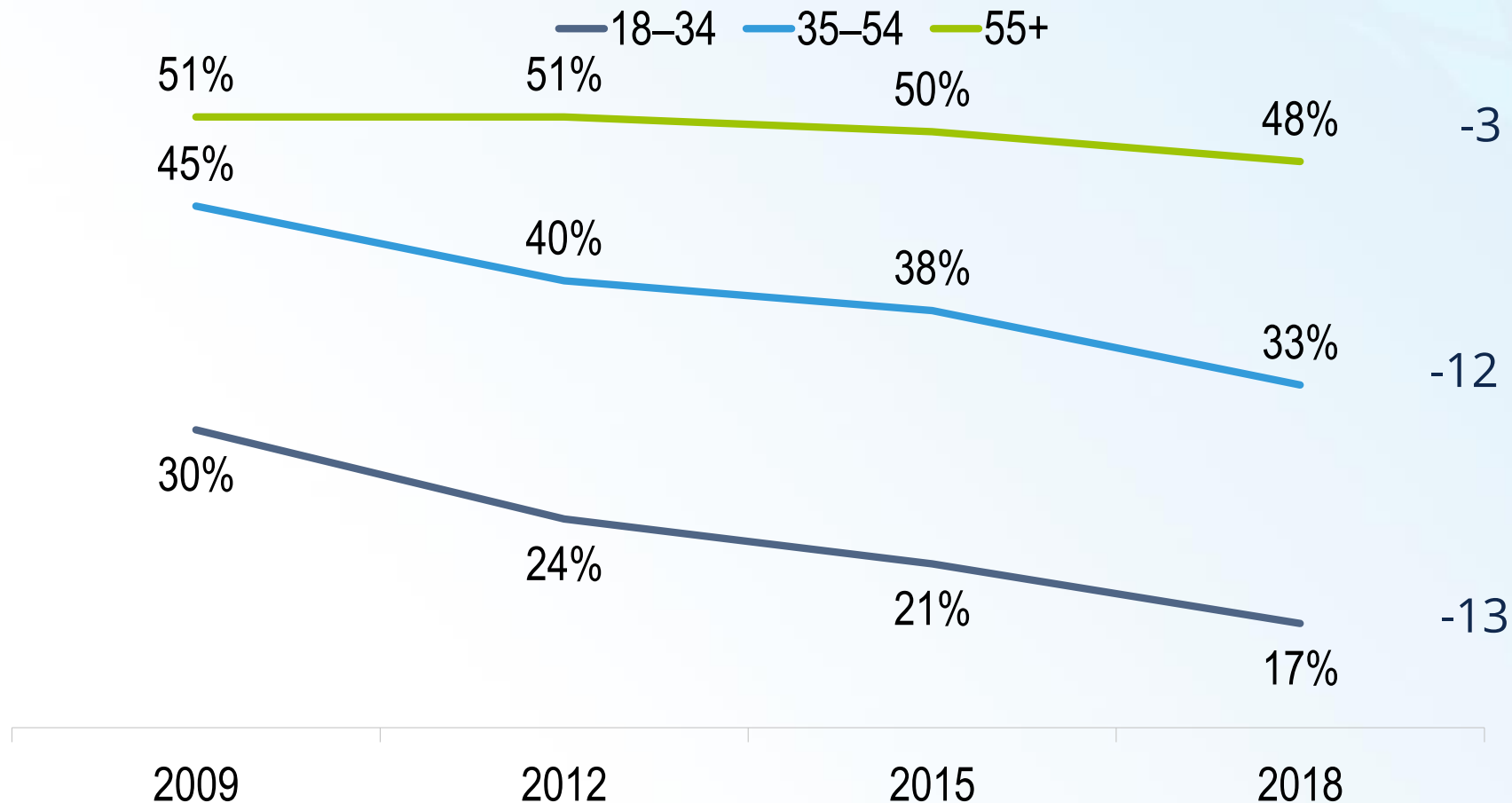


Why is it Falling?



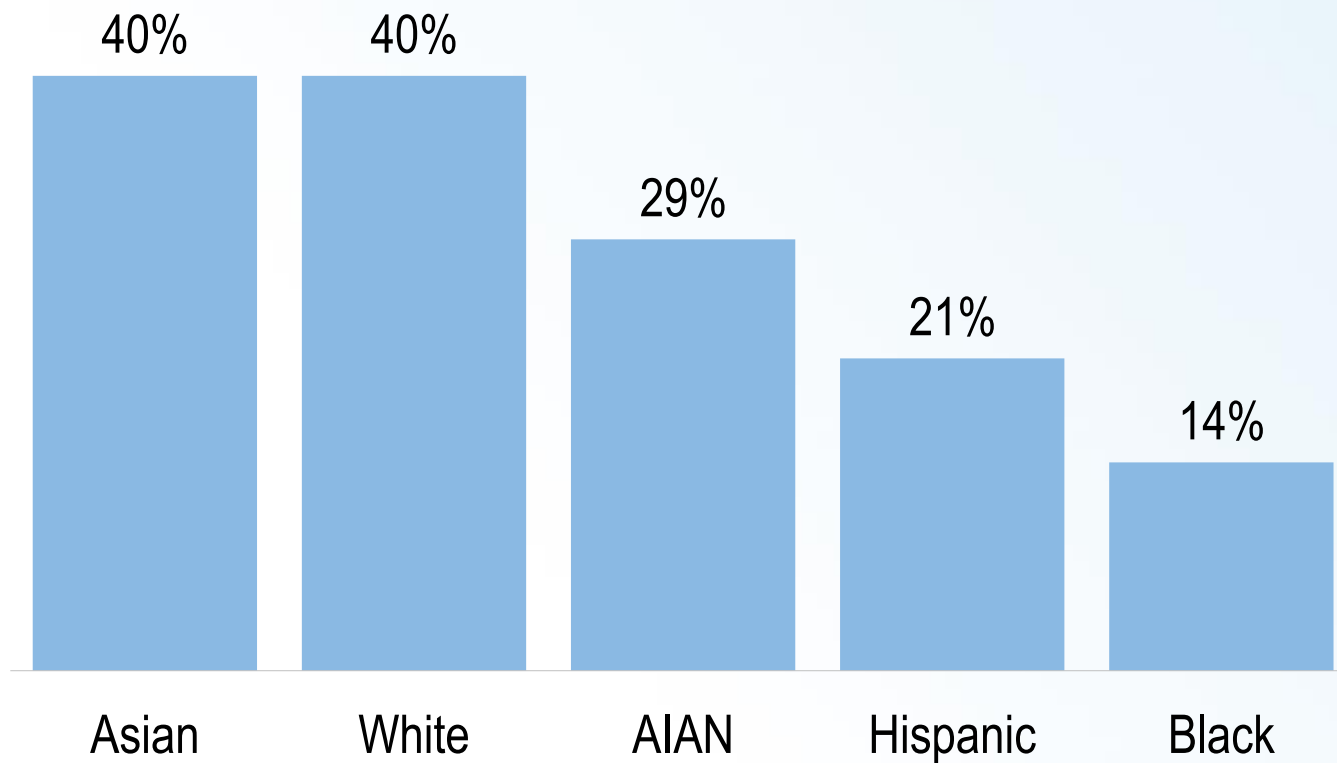
Age Driving Decrease ... in Part

% who answered four or more quiz questions correctly



Financial Literacy by Race

% High Financial Literacy



Large race-based differences in Financial literacy

Gender and Financial Literacy

High financial literacy

Women 26%

Men 42%

Why the gap?

“Don’t know?”

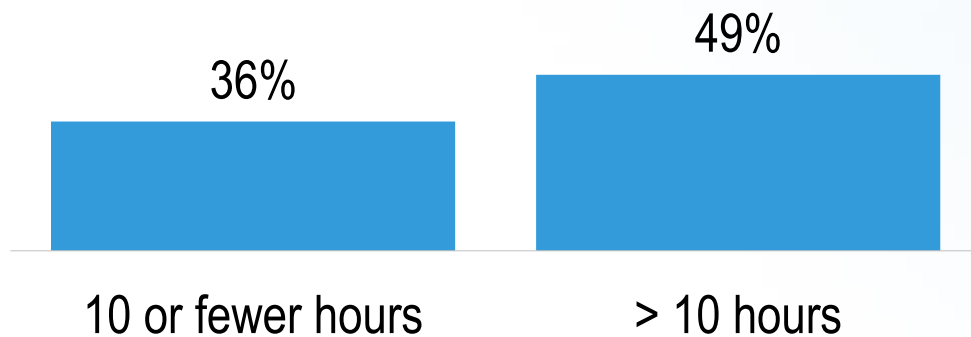


Financial Education

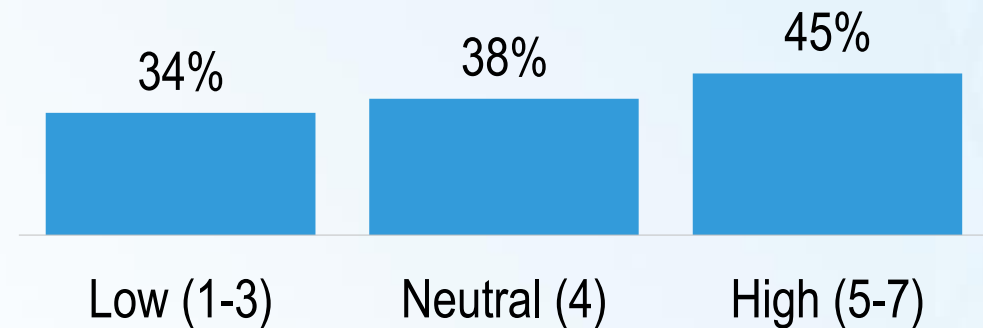
Quantity and Quality Matter

% Spending Less than Their Income

By AMOUNT of financial education



By QUALITY of financial education



Key Takeaways

Financial capability is no longer improving in step with the economy

Financial capability gaps are widening—young & minorities falling behind

1

Financial anxiety is high—particularly among women

Nearly a third of Americans has avoided medical services for cost reasons

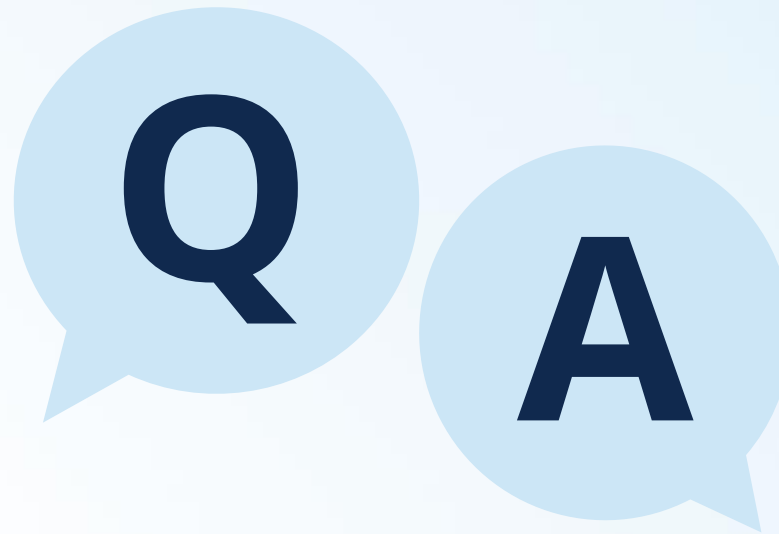
Student loans are still a drag

2

Financial literacy is falling, and we're not sure why

Financial education could help

3



High-Cost Borrowing

- Pawn shop
- Short-term payday loan
- Rent-to-own store
- Auto title loan
- Tax refund advance



29% have used one or more

	Age			Ethnicity				Dependents	
	18-34	35-54	55+	White	Black	Hispanic	Asian	Yes	No
Used one or more	45%	32%	12%	23%	50%	38%	24%	42%	22%

Second Jobs and the Gig Economy

One third of Americans have a second job

17% have taken on a work assignment through Website or app

Large differences by age and race

