Social Media and Public Communications: Helping You Get It Right
Wednesday, November 10
11:45 a.m. – 12:15 p.m.

This session provides attendees with what they need to know when creating and supervising social media and other communications. Join FINRA staff as they lead this interactive discussion and answer your questions about how to stay compliant when communicating through social networks, advertisements, email, and mobile devices.

Moderator: Sharon Alexander
Senior Principal Analyst, Risk Monitoring
FINRA Market Regulation

Panelists: Stephanie Gregory
Associate Director
FINRA Advertising Regulation

Anthony Maher
Associate Director
FINRA Advertising Regulation

Social Media and Public Communications: Helping You Get It Right Panelist Bios:

Moderator:

Sharon Alexander is Senior Principal Analyst in the Risk Monitoring Department of Member Supervision and is responsible surveilling and assessing member firm risk. She joined FINRA in 2011 as a Senior Examiner in Member Supervision, after an eight-year career in public and corporate accounting. Ms. Alexander received her bachelor's degree in Accounting and Management Information Systems from Florida International University. She is also a Certified Fraud Examiner and a Certified Anti-Money Laundering Specialist.

Panelists:

Stephanie Gregory is Associate Director of the Complex Review Team in FINRA's Advertising Regulation Department. Ms. Gregory's primary responsibility is managing staff members dedicated to the review of matters involving complex products and novel regulatory concerns. Her team provides support to other FINRA departments in connection with firm examinations and enforcement proceedings that involve communications with the public. Ms. Gregory joined the Advertising Regulation Department in 2004. She received her bachelor's degree in Economics and Political Science from Boston University, and her law degree from Pennsylvania State University Dickinson School of Law.

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.

Social Media and Public Communications: Helping You Get It Right

Panelists

- **Moderator**
  - Sharon Alexander, Senior Principal Analyst, Risk Monitoring, FINRA Market Regulation
- **Panelists**
  - Stephanie Gregory, Associate Director, FINRA Advertising Regulation
  - Anthony Maher, Associate Director, FINRA Advertising Regulation

FINRA Advertising Regulation Department

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

  Website: [*www.finra.org/Advertising*](www.finra.org/Advertising)

  Telephone number: 240-386-4500

FINRA Rule 2210: Introduction and Definitions

Retail Communication	Any written or electronic communication distributed to more than 25 retail investors within any 30 calendar-day period
Correspondence	Any written or electronic communication distributed or made available to 25 or fewer retail investors within any 30 calendar-day period
Institutional Communication	Any written or electronic communication distributed or made available only to institutional investors Does not include a member's internal communications

Supervision of Institutional Communications and Correspondence

- FINRA rules permit firms to implement their own customized supervisory procedures for institutional communications and correspondence.
- Firms may take a risk-based approach that permits post use review or the use of sampling, instead of prior to use approval.
- If a firm's procedures do not require prior to use principal approval, then the firm must:
  - Train personnel on the procedures;
  - Conduct surveillance reviews to test compliance;
  - Document the reviews; and
  - If problems are revealed, document findings and corrective actions taken.

Retail Communications: Principal Approval

FINRA

- Registered Principal must approve most retail communications prior to use or filing with FINRA.
- Significant exceptions from principal approval (supervision required):
  - Interactive social media postings;
  - Material that does not promote a product or service;
  - Material filed by another firm and reviewed by FINRA as being consistent with standards; and
  - Certain research related material (e.g., market letters).

Filing Requirements for Retail Communications

- **10 business days *prior* to first use, firms must file:**
  - *Widely-distributed* retail communications such as advertisements for one year from a new firm's membership effective date;
  - Options and security futures retail communications used before delivery of the disclosure document; and
  - Retail communications about customized mutual fund rankings.
- ***Within* 10 business days of first use, firms must file retail communications:**
  - Concerning derivative products registered under the Securities Act of 1933;
  - 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);
  - Concerning direct participation programs and collateralized mortgage obligations.

Exceptions to the Filing Requirements

- Interactive social media posts
- Institutional communications and 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

Content Standards for All Communications

- Must be fair, balanced and complete and not omit material information.
- False, misleading, promissory, exaggerated or unwarranted statements or claims prohibited.
- May not predict or project performance (with certain exceptions).
- Material information may not be in footnotes.
- Statements must be clear and provide a balanced treatment of risks and potential benefits.
- Communications must be appropriate for the audience.

For more information see *www.finra.org/advertising*

Social Media: Core Concepts

Personal vs. Business Use

Static vs. Interactive Communications

Adoption and Entanglement

*Recordkeeping

*Supervision

*Third-party content

Social Media: FINRA Regulatory Notices

FINRA.

10-06: Guidance on Blogs and Social Networking Web Sites (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 Communications (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

Recordkeeping Responsibilities

- **Firms must retain records of communications pertaining to their "business as such."**
  - "Business as such" is facts and circumstances analysis based on the content of the communication.
  - It does not depend upon the type of device or technology (including a third-party's platform or system) or whether it's a personal device.
- **Firms must retain business communications on social media, messaging services, mobile devices, etc.**
- **Different approaches may be needed for instant messages, text messages, and messaging apps.**
- **General guidelines and practices:**
  - Retained
  - Retrievable
  - Supervised

Business vs. Personal Use

- FINRA's guidance does not apply to personal use of social media.
- Firms must educate their representatives to distinguish between business and non-business (personal) communications.
- Autobiographical information may not cause a personal communication to become a business communication. For example:
  - Emailing a resume to a prospective employer.
  - Identifying one's employer on a social media profile page that is not used to promote the broker-dealer's business.
- In a personal communication an associated person may share or link to content that the firm makes available that does not concern the firm's products or services without subjecting the communication to FINRA Rule 2210. For example:
  - Information about the firm's sponsorship of a charitable event, a human-interest article, an employment opportunity, or employer information covered by state or federal fair employment laws.

Supervision: Static vs. Interactive

FINRA Rule 2210 establishes different supervisory standards for static versus interactive retail communications.

- Static: Must be approved prior to use by a registered principal, may be subject to a filing requirement.
- Interactive: May be supervised flexibly in accordance with firm's written supervisory procedures, not subject to the filing requirements.
- Blog example:
  - Initial blog posting – static retail communication requiring prior-use principal approval.
  - Comments on blog posting – interactive and could be supervised flexibly by the firm.

Third-Party Posts

- **Generally, third-party posts are not subject to FINRA's advertising rules unless the firm has adopted or becomes entangled with the content of an interactive post.**
- **The recordkeeping requirements apply to third-party content posted in a firm's interactive electronic forum.**
- **Common practices for firm-sponsored websites:**
  - Monitor third-party posts to address copyright issues or to block offensive material.
  - Establish usage guidelines for third parties that are permitted to post.
  - Screen third-party content based on the expected usage and frequency of third-party posts.
  - Disclose firm policies regarding responsibility for third-party posts.

Links to Third-Party Content

- **A firm is not responsible for the content on a third-party site it links to if the firm does not:**
  - "Adopt" or become "entangled" with the content of the third-party site; and
  - Know, or have reason to know, that the site contains false or misleading information.
- **A firm is responsible when linking to or sharing specific content posted by an independent third-party. The firm has adopted the specific content and must ensure it complies with the communications rules.**

Ongoing Website Links

- **A firm may not have adopted content on an independent 3rd-party website, if it posts an ongoing link to a section of the website, and:**
  - The link is available and accessible continuously, regardless of whether the linked site contains content favorable to the firm and regardless of whether the independent 3rd-party updates or changes its website;
  - The firm does not have influence or control over the independent 3rd-party website;
  - The language introducing the link complies with the communications rules; and,
  - The firm has not knowingly linked to false or misleading content.

Testimonials and Endorsements

- Unsolicited 3rd-party comments on a firm's social media account generally are not deemed the firm's communication; however, liking or sharing favorable comments will be deemed adoption of the comments by the firm.
- FINRA Rule 2210(d)(6)(B) requires that retail communications or correspondence that include testimonials about the investment advice or investment performance of a firm or its products must prominently disclose that the testimonial:
  - May not be representative of the experience of other customers;
  - Is no guarantee of future performance or success; and,
  - Is a paid testimonial if more than $100 in value was paid for it.
- Firms may include a clearly labelled hyperlink to these disclosures, e.g., "Important testimonial information."

Reference Material and Resources

- FINRA Rule 2210 Frequently Asked Questions
  - *www.finra.org/rules-guidance/guidance/faqs/advertising-regulation*
- FINRA *Regulatory Notice 19-31, Advertising Regulation, Disclosure Innovations in Advertising and Other Communications with the Public* (September 2019)
  - *www.finra.org/sites/default/files/2019-09/Regulatory-Notice-19-31.pdf*
- 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 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 11-39, Social Media Websites and the Use of Personal Devices for Business Communications, Guidance on Social Networking Websites and Business Communications* (August 2011)
  - *www.finra.org/sites/default/files/NoticeDocument/p124186.pdf*
- FINRA *Regulatory Notice 10-06, Social Media Web Sites, Guidance on Blogs and Social Networking Web Sites* (January 2010)
  - *www.finra.org/sites/default/files/NoticeDocument/p120779.pdf*


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