

## Advertising Compliance Bootcamp: Select Topics

Thursday, October 20, 2022

1:30 p.m. - 2:30 p.m.

This panel is designed for compliance and marketing professionals seeking to gain a deeper understanding of select Rules and FINRA guidance to create compliant communications. Panelists review frequently raised regulatory compliance questions related to communications concerning mutual funds, ETFs and variable insurance products. The select topics include disclosure and performance standards of SEC Rules, standards for variable insurance product communications, guidance with respect to options communications, presentation of rankings, and a discussion of the core concepts of social media and digital communications.

**Moderator:** Derek Ashworth  
Associate Director  
FINRA Advertising Regulation

**Panelists:** Stephanie Gregory  
Associate Director  
FINRA Advertising Regulation

David Kim  
Associate Principal Analyst  
FINRA Advertising Regulation

Caroline Waugaman  
Principal Analyst  
FINRA Advertising Regulation

## Advertising Compliance Bootcamp: Select Topics 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 22 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.

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.



**David Y. Kim** is Associate Principal Analyst in the FINRA Advertising Regulation Department, and reviews sales communications filed by member firms. Mr. Kim joined the Advertising Regulation Department in 2014. He previously worked at a capital market research company, IPREO. Mr. Kim received a B.A. in Economics and an M.B.A. from University of Maryland at College Park.



**Caroline Waugaman** is Principal Analyst in FINRA's Advertising Regulation Department. She joined NASD in 1996 before its consolidation with NYSE Member Regulation, which resulted in the formation of FINRA in 2007. Prior to joining the Advertising Regulation Department, she was an analyst in the Registration and Disclosure Department at NASD. Ms. Waugaman received her Bachelor of Science degree from Strayer University.

**2022 FINRA Advertising Regulation Conference**  
October 20-21, 2022 | Washington, DC | Hybrid Event

# **Advertising Compliance Bootcamp: Select Topics**

# Panelists

- **Moderator**

- Derek Ashworth, Associate Director, FINRA Advertising Regulation

- **Panelists**

- Stephanie Gregory, Associate Director, FINRA Advertising Regulation
- David Kim, Associate Principal Analyst, FINRA Advertising Regulation
- Caroline Waugaman, Principal Analyst, 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
- 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.

# SEC Rule 482 Disclosures

## ○ Prospectus offer – required 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 the prospectus carefully 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 – required 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
  - **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 communications 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

# CHANGING SEASONS GROWTH FUND

## Investment Objective

The Fund seeks long-term capital growth.

## Principal Strategy

The Fund invests in companies with the potential for growth in varying market conditions.



## Total Returns as of 9/30/2022

<u>Share Class</u>	<u>1 Year</u>	<u>5 Year</u>	<u>10 Year</u>	<u>Since Inception</u>
A (without sales charges)	-4.62%	3.98%	6.78%	5.93%
A (with 5.5% sales charges)	-9.36%	2.19%	6.51%	5.48%
Horizons Apple Cider Index	-5.41%	4.42%	5.83%	4.58%

Expense Ratio<sup>1</sup>: (gross/net) 1.03%/0.75%

<sup>1</sup>The Advisor has contractually waived a portion of their fees/expenses until 12/31/2022. Performance would have been lower if waivers did not apply. Fund inception date 12/31/11.

***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 [EKKFunds.com](http://EKKFunds.com).***



# FALLING LEAVES ETF



Excerpt

**Investment Objective**

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

**Summary**

The Fund invests in companies we believe have the potential for growth in varying market conditions.

**Total Returns as of 9/30/2022**

	<b>1 Year</b>	<b>5 Year</b>	<b>10 Year</b>	<b>Since Inception*</b>
NAV Return	-2.71%	9.03%	N/A	7.98%
Market Return	-2.68%	8.99%	N/A	7.95%
Horizons Falling Leaf Index	-2.78%	9.06%	N/A	8.01%
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.

\*Inception Date: February 29, 2016

***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. For the most recent month-end performance, please call us toll free at (800) 867-5309.***

# 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.**

# Variable Annuity (VA) – 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.

# MyGoal Retirement+ Variable Annuity

Separate Account Established: May 8, 2003

Contract Purchased: March 1, 2013

**Average Annual Total Returns as of 09/30/2022** (reflects maximum contingent deferred sales charge)

Investment Options	Added to Separate Account	1 Year	5 Year	10 Year	Since Inception
U.S. Large-Cap Growth	05/08/2003	-13.82%	9.12%	7.12%	8.12%
Small-Cap Value	12/31/2008	10.82%	6.82%	5.42%	7.52%
Emerging Markets Equity	09/29/2016	5.53%	3.85%	-	4.52%
Total Return Bond II	05/02/2011	-1.24%	2.51%	4.11%	3.72%

Past performance does not guarantee future results. Current performance may be lower or higher than the performance data quoted. The investment return and principal value will fluctuate so that an investor’s units, 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.

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.

Saleh & Knight Distributors, Inc. Member FINRA

# Variable Life Insurance (VLI) – Historical Performance

- Typically appears in communications 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)
- **SEC Rule 482**
- **SEC Rule 34b-1**
- **SEC Rule 135a**

# Variable Insurance Products – What to do

- Clearly describe the product being offered and its long-term nature.
- Balance benefits with applicable risks, fees, tax liabilities, and potential penalties.
- Disclose guarantees are subject to the claims-paying ability of the issuing company.
- Ensure fair, balanced, and complete comparison to other products.
- Discuss riders in a fair and balanced manner.
- Reference both the variable insurance product prospectus and the underlying funds prospectuses, as appropriate, within the prospectus offering statements.

# Variable Insurance Products – What NOT to do

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

# 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.

# FINRA Rule 2212: Investment Company Rankings

Changing Seasons funds have consistently performed well versus competitors over the long-term


Name of the ranking entity	Overall CW Rating based on total return as of 9/30/22			Criteria (i.e. Total return, risk-adjusted return)
	One-Year	Five-Year	Ten-Year	
Changing Seasons Growth Fund <i>Category: Large Cap Growth</i>	16 out of 742	24 out of 518	19 out of 363	
Changing Seasons Small Cap Fund <i>Category: Small Cap</i>	26 out of 445	8 out of 388	15 out of 321	
Changing Seasons 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. CW Rankings — CW Ratings Services, Inc. is an independent publisher of mutual fund rankings, records rankings for these and other Changing Seasons Funds for one-year, five-year, and ten-year time periods. CW Ratings Services compares mutual funds within a universe of funds with similar investment objectives, including dividend reinvestment. CW Rankings are based on total return at net asset value and do not reflect sales charges. CW 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.

# Communications Concerning Options

- Subject to FINRA Rule 2220.
- Registered Options 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.

# Social Media: Core Concepts



<b>Personal vs. business use</b>	<ul style="list-style-type: none"><li>• Recordkeeping</li></ul>
<b>Static vs. interactive communications</b>	<ul style="list-style-type: none"><li>• Supervision</li></ul>
<b>Adoption and entanglement</b>	<ul style="list-style-type: none"><li>• Third-party content</li></ul>

# 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 insurance 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 Bootcamp: Select Topics



## Advertising Compliance Bootcamp: Select Topics

Thursday, October 20, 2022

1:30 p.m. - 2:30 p.m.

The following resources relate to the discussion during the Advertising Compliance Boot Camp – Select Topics presentation. Please visit the FINRA website at <https://www.finra.org/rules-guidance/key-topics/advertising-regulation> for additional Rules that may apply to the review of communications in addition to Regulatory Notices and Guidance.

### FINRA Advertising 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 2220](#) - Options Communications

### SEC Advertising Rules

- [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

### Guidance

- [Regulatory & Compliance Alert, Exchange-Traded Fund Performance \(Fall 2001\)](#), Pages 12 & 13
- [Regulatory & Compliance Alert, Performance Pre-dating the Offering of a Fund in the Variable Annuity](#) (Summer 2002), Page 8
- NASD [Notice to Members 06-48](#), SEC Approves Amendments to NASD Rules 2210 and 2211 to Require Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material (September 2006)
- FINRA [Regulatory Notice 10-06](#), Social Media Web Sites, Guidance on Blogs and Social Networking Web Sites (January 2010)
- 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)
- FINRA [Regulatory Notice 17-18](#), Social Media and Digital Communications, Guidance on Social Networking Websites and Business Communications (April 2017)