

Plenary Session II: Current Issues

Thursday, October 20, 2022

10:00 a.m. - 11:00 a.m.

Join FINRA staff and industry panelists for an in-depth conversation on current advertising regulatory issues, including the new Investment Advisers Act Marketing Rule.

Moderator: Joseph Savage
Vice President, OGC Regulatory Analysis
FINRA Office of Disciplinary Affairs

Panelists: Amy Sochard
Vice President
FINRA Advertising Regulation

Joseph Price
Senior Vice President
FINRA Corporate Financing & Advertising Regulation

Melissa Rovers Harke
Director, Division of Investment Management
U.S. Securities and Exchange Commission (SEC)

Plenary Session II: Current Issues Panelists Bios:

Moderator:



Joe Savage is Vice President in FINRA's Office of General Counsel. 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.

Panelists:



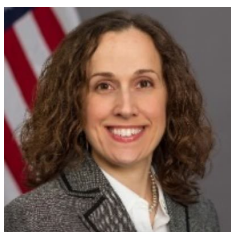
Amy C. Sochard is Vice President of FINRA's Advertising Regulation Department. The department helps protect investors by ensuring members of FINRA use communications including social media, digital advertising and other marketing material that are fair, balanced, and not misleading. Ms. Sochard oversees the department's regulatory review programs and business operations, including the development of technology to facilitate the review of communications. Ms. Sochard provides expertise and policy guidance to other FINRA departments concerning FINRA, SEC, MSRB and SIPC rules pertaining to communications with the public.

She also oversees the development of new rules, published guidance, and interpretations regarding communications, and she routinely speaks at industry events on these topics. Prior to joining FINRA, Ms. Sochard worked with a real estate syndication firm in Washington, DC. She received a Bachelor's degree with distinction in English from the University of Virginia and studied poetry writing at Columbia University.



Joseph E. Price is Senior Vice President, Regulatory Analysis. He oversees FINRA's Corporate Financing and Advertising Regulation Departments. The Corporate Financing Department regulates capital-raising activities of broker/dealers; including equity, debt, REIT, closed-end fund, limited partnership offerings and private placements. The 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 earned a degree in Economics from the University of Wisconsin and received his J.D. from Fordham University.



Melissa Rovers Harke is the Director of the Investment Adviser Regulation Office in the SEC's Division of Investment Management. Her office is responsible for investment adviser rulemaking and guidance, including the IA Marketing Rule. Prior to joining the SEC in 2008, Melissa was an Associate in the Investment Management Group of the Washington, D.C. office of K&L Gates. She received her undergraduate degree from Bucknell University and her law degree from American University.

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

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Panelists

○ Moderator

- Joseph Savage, Vice President, OGC Regulatory Analysis, FINRA Office of Disciplinary Affairs

○ Panelists

- Amy Sochard, Vice President, FINRA Advertising Regulation
- Joseph Price, Senior Vice President, FINRA Corporate Financing & Advertising Regulation
- Melissa Rovers Harke, Director, Division of Investment Management, U.S. Securities and Exchange Commission (SEC)

AGENDA

- 01 | Proposed Changes to FINRA Rules Governing Projections
- 02 | Investment Advisers Act Marketing Rule
- 03 | Recent FINRA Advertising Regulation FAQs
- 04 | Private Placement Communications
- 05 | Complex Products Communications
- 06 | Questions & Answers

Proposed Changes to FINRA Rules Governing Projections

- FINRA Rule 2210(d)(1)(F)
- Regulatory Notice 17-06
- Comments on RN 17-06
- Investment Advisers Act Marketing Rule
- Current Status and Considerations

Investment Advisers Act Marketing Rule

- Prior Advisers Act Rules Governing Advertising and Client Solicitations
- Advisers Act Rule 206(4)-1
 - General Prohibitions
 - Testimonials and Endorsements
 - Third-Party Ratings
 - Performance
 - > Gross Performance
 - > Portfolio Performance
 - > Related Performance
 - > Extracted Performance
 - > Hypothetical Performance
 - > Predecessor Performance

Recent FINRA Advertising Regulation FAQs

- Non-Promotional Communications
- Use of Hyperlinks in Electronic Communications
- Internal Rates of Return
- Projections and Forecasts
- Supervision of Live and Online Public Appearances

Private Placement Communications

- Amendments to FINRA Rule 5122 and 5123
- Regulatory Notice 20-21
 - Private Placement Retail Communications
 - Third-Party Prepared Materials
 - Balanced Presentations of Risks and Investment Benefits
 - Reasonable Forecasts of Issuer Operation Metrics
 - Distribution Rates
 - Internal Rate of Return
- Other Considerations for Private Placement Communications

Complex Products Communications

- Regulatory Notice 22-08
- Regulatory Notice 22-11
- General Considerations for Complex Products Communications

Questions & Answers





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Resources:

- FINRA Rule 2210 (d)(1)(F): Communications with the Public
<https://www.finra.org/rules-guidance/rulebooks/finra-rules/2210>
- Regulatory Notice 17-06 (February 2017); FINRA Requests Comment on Proposed Amendments to Rules Governing Communications with the Public
https://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-06.pdf
- SEC Release No. IA-5653 (December 22, 2020) (Investment Adviser Marketing; Final Rule)
<https://www.sec.gov/rules/final/2020/ia-5653.pdf>
- Frequently Asked Questions About Advertising Regulation
<https://www.finra.org/rules-guidance/guidance/faqs/advertising-regulation>
- Regulatory Notice 21-26 (July 15, 2021); FINRA Amends Rules 5122 and 5123 Filing Requirements to Include Retail Communications That Promote or Recommend Private Placements
<https://www.finra.org/sites/default/files/2021-07/Regulatory-Notice-21-26.pdf>
- Regulatory Notice 20-21 (July 1, 2020); FINRA Provides Guidance on Retail Communications Concerning Private Placement Offerings
<https://www.finra.org/sites/default/files/2020-06/Regulatory-Notice-20-21.pdf>
- Regulatory Notice 22-08 (March 8, 2022); FINRA Reminds Members of Their Sales Practice Obligations for Complex Products and Options and Solicits Comment on Effective Practices and Rule Enhancements
<https://www.finra.org/sites/default/files/2022-03/Regulatory-Notice-22-08.pdf>
- Regulatory Notice 22-11 (March 8, 2022); FINRA Reminds Firms of Their Sales Practice Obligations for Alternative Mutual Funds
<https://www.finra.org/sites/default/files/2022-04/Regulatory-Notice-22-11.pdf>