

Back to the Future in Fixed Income Investing? Navigating a Changing Landscape in Municipal and Fixed Income Securities

Friday, October 21, 2022

11:00 a.m. - 12:00 p.m.

This session discusses the latest developments in fixed income communications compliance with FINRA, MSRB and industry experts. Panelists touch on findings from the 2022 Report on FINRA's Examination and Risk Monitoring Program pertaining to effective practices for creating compliant municipal securities communications. Panelists also discuss compliance considerations for communications on behalf of fixed income investments in a market environment of rising interest rates.

Moderator: Derek Ashworth
Associate Director
FINRA Advertising Regulation

Panelists: Kimberly Flanders
Associate Director
FINRA Advertising Regulation

Cynthia Friedlander
Senior Director, Fixed Income Regulation
FINRA Office of General Counsel

Johanna Anders
Senior Director Marketing Supervisory Controls
TIAA-CREF

Bri Joiner
Director, Regulatory Compliance
Municipal Securities Rulemaking Board (MSRB)

Back to the Future in Fixed Income Investing? Navigating a Changing Landscape in Municipal and Fixed Income Securities 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:



investigator with the Resolution Trust Corporation. Ms. Flanders received a B.A. from the University of Georgia.

Kimberly Flanders is Associate Director in FINRA's Advertising Regulation Department. Her chief responsibility is managing staff members dedicated to the review of matters involving complex products and novel regulatory concerns. Ms. Flanders joined FINRA (f/k/a NASD) in March 1995 as an examiner in the Enforcement Department. She joined the Advertising Regulation Department in March 1996. In January 2001, Ms. Flanders joined Bisys Services as a senior advertising regulation consultant. Ms. Flanders returned to the Advertising Regulation Department in September 2001. Prior to joining FINRA, she was an



University of Virginia and an M.B.A. with a concentration in finance from George Mason University.

Cynthia Friedlander is Senior Director of Fixed Income Regulation in FINRA's Office of General Counsel. Ms. Friedlander is responsible for directing the design, development and delivery of fixed income-related examination and policy guidance to FINRA staff, as well as to member firms, and is FINRA's primary liaison to the Municipal Securities Rulemaking Board and the Securities and Exchange Commission's Office of Municipal Securities. Ms. Friedlander represents FINRA at government agency, SRO, industry and advisory meetings and is a staff liaison to FINRA's Fixed Income Committee. She holds a B.A. in government from the



regarding the applicability of rules, regulatory and jurisdictional requirements, internal review standards and disclosure guidelines as well as other risk-related issues through their support of the review of marketing materials.

Johanna Anders, CSCP®, is a Managing Director and Head of Global Marketing and Communications Compliance as part of TIAA Enterprise Risk & Compliance with over 25 years of experience within the financial services industry spanning across asset management as well as banking and insurance (life and property & casualty). Her cohesive one-team approach for global support as a shared service includes providing advice to new marketing and communications initiatives from a compliance perspective, including emerging areas of communication and technology efforts such as social media and mobile applications, and guidance

During her tenure at the firm, Ms. Anders has led key strategic initiatives in addition to helping further build various core Compliance functions, including developing artificial intelligence and overseeing the firm-wide Records Management program, eDiscovery and production, Electronic Communications, Retention and Monitoring, Ethics and Privacy Offices, U.S. Distribution (including Canada), Broker/Dealer Compliance and other cross-functional support such as new product initiatives, sales and distribution, business continuity planning, and ongoing tracking and analysis of regulatory developments. Ms. Anders also chaired the Nuveen Disclosure Oversight Team (NDOT) which helped to ensure that the offering documents, promotional literature and other materials used in connection with Nuveen's investment products and services contain appropriate disclosure reflecting the evolving policies, practices, market conditions and other factors affecting such products and services.

Prior to joining Nuveen, Ms. Anders was a Managing Director at Charles Schwab and has held various senior compliance positions at Ameriprise Financial, USAA and Morgan Stanley/Van Kampen which included the development of strategy for in-house and field sales force Advertising and Marketing Review, Sales Practices, Regulatory Programs, and Compliance Training and co-heading the Marketing and Hedge Fund Practices at Berger Legal.

Ms. Anders is a member of the National Society of Compliance Professionals (NSCP) and the Investment Company Institute's (ICI) Advertising Compliance Advisory Committee. She also served on the Municipal Securities Rulemaking Board's (MSRB) Professional Qualifications Advisory Committee, the FINRA Series 24/26 Examination Review Committee, and the CSCP Board of Governors, Curriculum Committee and Test Development Committee. Ms. Anders received the Certified Securities Compliance Professional (CSCP) designation, earned a B.A. in Communications from Marquette University and holds the Series 6, 7, 24, 26, 51 and 63 securities registrations. Ms. Anders is a frequent industry speaker on topics involving compliance best practices and innovative ways to utilize technology in this space.



Bri Joiner is Director of Regulatory Compliance at the Municipal Securities Rulemaking Board (MSRB), in which she oversees a portfolio of programs under the MSRB's Market Regulation department, maintaining responsibility for strategic planning and execution of long-term objectives. Ms. Joiner is directly responsible for the MSRB's professional qualifications program, examiner training program and regulatory compliance program initiatives. Prior to assuming her current role, Ms. Joiner managed the MSRB's regulatory education program leading the development and delivery of content for regulated entities and market stakeholders

in support of a fair and efficient municipal securities market. Prior to joining the MSRB, Ms. Joiner spent 10 years at the Financial Industry Regulatory Authority (FINRA). She served as Senior Regulatory Policy Analyst in FINRA's Office of General Counsel, where she worked on rulemaking initiatives and researched legal and compliance matters. She also held the position of Senior Manager in FINRA's Member Education and Training department, where she advised on initiatives having a market impact and served as a subject matter expert on various topics. Ms. Joiner began her career at the U.S. Securities and Exchange Commission. Ms. Joiner earned a Bachelor's degree, *magna cum laude*, from Spelman College and a juris doctor from the Walter F. George School of Law, Mercer University. She is a member of Phi Beta Kappa Honor Society, Golden Key International Honour Society and Phi Delta Phi Legal Fraternity.

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

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Panelists

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- Bri Joiner, Director, Regulatory Compliance, Municipal Securities Rulemaking Board (MSRB)

A Changing Landscape in Fixed Income Investing

- Combating inflation
- Rising interest rates
- Declining returns among fixed income assets

MSRB Rule G-21 & FINRA Rule 2210: Common Content Standards

- Communications must be fair and balanced and must provide a sound basis for evaluating the facts regarding any product or service. Omitting material information is misleading.
- False, exaggerated, unwarranted, promissory, or misleading statements or claims are prohibited.
- Material information should not be in legends and footnotes.

MSRB Rule G-21 & FINRA Rule 2210: Common Content Standards

- Statements must be clear and not misleading in the context they are presented and provide a balanced treatment of risks and potential benefits.
- The nature of the audience must be considered so details and explanations are appropriate.
- Communications may not predict or project performance, imply that past performance will recur or make exaggerated forecasts except for:
 - > Hypothetical illustrations of mathematical principles, such as compound interest, that do not predict or project performance; and
 - > Investment analysis tools.

MSRB Rule G-21 & FINRA Rule 2210: Common Content Standards

- Disclosure of firm or entity providing products or services
- Disclosure of tax considerations & consequences
- Limitations on the use of regulators' names (MSRB & FINRA)
- Testimonial disclosure

FINRA Rule 2210: Types and Definitions of Communications with the Public

Retail Communication

A communication distributed to more than 25 retail investors within any 30-calendar-day period.

Correspondence

A communication distributed or made available to 25 or fewer retail investors within any 30-calendar-day period.

Institutional Communication

A communication distributed or made available only to institutional investors.

MSRB Rule G-21: Types of Communications



MSRB Rule G-21: Types of Communications

Form Letter

Any written letter or electronic mail message distributed to more than 25 persons within any period of 90 consecutive days

Professional Advertisement

Any advertisement concerning facilities, services or skills related to broker, dealer or municipal securities dealer

Product Advertisement

Any advertisement concerning one or more municipal securities or one or more specific issues...

Municipal Fund Security Product Advertisement

Must also Include information on required disclosures (format) regarding products, performance data and more...

FINRA Rule 2210: Supervision Requirements

- **Retail Communications: Principal Approval**
 - Registered Principal must approve most retail communications prior to use or filing with FINRA.
- **Correspondence and Institutional Communications**
 - Firms must implement written, supervisory procedures.
 - Firms may take a risk-based approach, e.g., may post-use review or sample communications rather than requiring prior-to-use approval.

MSRB Rule G-21: Supervision Requirements

- **Advertisements: Principal Approval**
 - A municipal securities principal or general securities principal must approve each advertisement in writing prior to its first use.

FINRA Rule 2210: Recordkeeping Responsibilities

- Retain all communications for 3 years as required by SEA Rules 17a-3 and 17a-4 and FINRA Rule 4511.
- Correspondence
 - Follow recordkeeping requirements of FINRA Rules 3110 and 4511.

MSRB Rule G-21: Recordkeeping Responsibilities

- Regulated entities shall make and keep current a record of all advertisements.
- Retain all communications for 4 years as required by Rule G-9(b)(xiii).

Creating Compliant Communications

- **2022 FINRA Exam & Risk Monitoring Program Report**
 - Findings
 - > False and misleading statements or claims about safety.
 - > Unwarranted claims regarding the expertise of the firm.
- **Effective Practices**
 - Maintaining and implementing procedures for firm municipal securities communications.

Fixed Income Regulation

- Understanding FINRA's Fixed Income Regulation's role
- Collaboration between FINRA & MSRB
- Current areas of interest for the fixed income securities market
- Knowing points of contact
- Current areas of interest

Guidance for Complex Debt Instruments

- Explain complex debt products consistent with the prospectus or offering document.
- Develop communications that describe products at a level appropriate for the audience.
- Present a balanced discussion of benefits and risks.
- Disclose fees and expenses associated with the product.

Considerations for Some Complex Debt Instruments

- **Asset-backed Securities (ABS)**
 - Creditworthiness of underlying collateral
 - Prepayment risk
 - Liquidity risk
 - Valuation risk
- **Structured Products**
 - Issuer credit risk
 - Early redemption risk (callable)
 - Market risk
 - Capped return potential risk

Considerations for Some Complex Debt Instruments

○ Firm Approach

- Consider guidance in FINRA Notices.
- Determine any potential impact to firm products & services.
- Seek input from FINRA advertising analyst.

Communication Technology Innovations

- **Advantages**
 - Timely and current communications
 - Value of responsiveness
- **Disadvantages**
 - Supervision challenges
 - Maintaining control for intended audiences



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Resources

- FINRA Rule 2210: Communications with the Public

<https://www.finra.org/rules-guidance/rulebooks/finra-rules/2210>

- MSRB Rule G-21: Advertising by Brokers, Dealers or Municipal Securities Dealers

<https://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-21>

- 2022 Report on FINRA's Examination and Risk Monitoring Program

<https://www.finra.org/rules-guidance/guidance/reports/2022-finras-examination-and-risk-monitoring-program>