

Advertising Compliance: Fundamentals of FINRA Rule 2210

Thursday, October 20, 2022

11:15 a.m. - 12:15 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: Anthony Maher
Associate Director
FINRA Advertising Regulation

Panelists: James Allen
Principal Analyst
FINRA Advertising Regulation

John Cunningham
Associate Principal Analyst
FINRA Advertising Regulation

Thomas Dineen
Principal Analyst
FINRA Advertising Regulation

Natlyn Murrain
Principal Analyst
FINRA Advertising Regulation

Advertising Compliance: Fundamentals of FINRA Rule 2210 Moderator and 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.

Panelists:



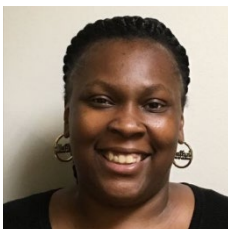
Jim Allen, Principal Analyst, has been with FINRA's Advertising Regulation Department for almost eight years in total, first joining the Department in 2008 and re-joining again this past spring. Prior to his current tenure he was with Morgan Stanley for six years in their retail product compliance group, focusing on communications with the public. Mr. Allen has been in the investment industry for more than 25 years as a registered principal, registered representative, and in several administrative and back-office roles. He holds a B.A. from SUNY Potsdam.



John F. Cunningham is Associate Principal Analyst in FINRA's Advertising Regulation Department. He joined the department in December 2000 and his primary responsibility is the review of broker/dealer communications for compliance with applicable rules. He is a member of the department's training committee. Prior to joining FINRA, Mr. Cunningham served as a registered representative for nine years. Mr. Cunningham holds a juris doctorate from the University of Baltimore School of Law, a Master of Business Administration from Loyola University of Maryland, and a Bachelor of Science degree in journalism from the University of Maryland.



Thomas Dineen is 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.



Natlyn D. Murrain is a Principal Analyst in the FINRA Advertising Regulation Department. Her primary responsibilities include the review of complex communications for compliance with applicable advertising rules. Prior to joining FINRA in 2011, Ms. Murrain spent four years as a compliance officer at a member firm. Ms. Murrain holds a Master's degree from Walden University and a Bachelor's degree from Virginia Union University.



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

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Panelists

○ Moderator

- Anthony Maher, Associate Director, FINRA Advertising Regulation

○ Panelists

- James Allen, Principal Analyst, FINRA Advertising Regulation
- John Cunningham, Associate Principal Analyst, FINRA Advertising Regulation
- Thomas Dineen, Principal Analyst, FINRA Advertising Regulation
- Natlyn Murrain, Principal Analyst, FINRA Advertising Regulation

By the end of the session, you should know:

- The role of the Advertising Regulation Department
- Definitions, approval, review and recordkeeping requirements
- The filing requirements and filing exemptions
- The content standards of FINRA Rule 2210
- How to comply with these 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

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

- Flexible supervision:
 - Risk-based procedures
 - Training
 - Surveillance
 - Follow-up to correct problems

Supervision of Retail Communications

- An appropriately qualified, registered principal must approve each retail communication prior to use or filing with FINRA.
- Exceptions include retail communications, that:
 - Do not make any financial or investment recommendation or promote a product or service;
 - Are posted on an online interactive electronic forum;
 - Are excepted from the definition of “research report.”
- 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.
- 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.

Filing Requirements for Retail Communications

- Within 10 business days of first use:
 - Promote or recommend specific registered investment companies or families;
 - Concern public direct participation programs; or
 - Concern CMOs and derivative products registered under the Securities Act of 1933.

Exclusions to the Filing Requirements

- Institutional Communications and Correspondence
- Retail communications that do not make any financial or investment recommendation or promote a product or service
- Interactive electronic social media posts
- Previously filed communications
- Article reprints

Submitting Communications to FINRA

- Advertising Regulation Electronic Files (AREF) system
- The Department also accepts voluntary filings

FINRA Rule 2210 General Content Standards

- 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.
- False, exaggerated, unwarranted, promissory, or misleading statements or claims are prohibited.
- Important or material information should not be in legends and footnotes.
- Communications may not predict or project performance

FINRA Rule 2210 Specific Content Standards

- Retail communications and correspondence
 - FINRA member name
 - Tax-free claims and tax-deferred compounding
 - Testimonials
 - Fees and expenses for open-end management investment company performance

FINRA Rule 2210 Specific Content Standards

○ Retail communications

- Comparisons must disclose all material differences
- Recommendations must disclose conflicts, may not refer to prior recommendations
- BrokerCheck must be included on a member's website

○ All communications

- Use of FINRA name and linking to the FINRA website

Public Appearances

- Seminars, forums, radio or TV interviews, or other unscripted speaking activities.
- General content standards of FINRA Rule 2210 apply.
- Establish 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.
- Scripts, slides, handouts, videos or other materials must comply with all applicable standards.

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
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- Frequently Asked Questions at finra.org/advertising

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



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Resources

- FINRA Rule 2210: Communications with the Public

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

- Communications with the Public: Rules Reference Guide - The Reference Guide can be found in the App under General Files